1-19-2007

Citibank (South Dakota) N.A. v. Carroll Clerk's Record v. 1 Dckt. 35053

COPY VOL 1 OF 2

CLERK

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

Citibank (South Dakota) N.A.

Plaintiff and Respondent

VS.

Miriam G. Carroll

SEE AUGMENTATION RECORD

Defendant and Appellant

Appealed from the District Court of the Second Judicial District for the State of Idaho, in and for Idaho County

Hon. John Bradbury District Judge

Pro Se

Attorney for Appellant

Sheila R. Schwager

Attorney for Respondent

Filed this _____ day of _____, 20____

_____ Clerk

By _____ Deputy

CAXTON PRINTERS, CALDWELL, IDAHO 168330

IN THE SUPREME COURT OF THE STATE OF IDAHO

Citibank (South Dakota) N.A.,
Plaintiff/Respondent

vs.

SUPREME COURT
NO. 35055

Miriam G. Carroll,
Defendant/Appellant.

****

CLERK'S RECORD ON APPEAL

****

Appeal from the District Court of the Second Judicial District of the State of Idaho, in and for the County of Idaho.

HONORABLE John Bradbury

****

Miriam G. Carroll
104 Jefferson Drive
Kamiah, ID 83536

Sheila R. Schwager
Attorney at Law
P.O. Box 1617
Boise, ID 83701-1617

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JEFFREY M. WILSON
LISA B RASMUSSEN
WILSON McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, ID 83701
Telephone: 208-345-9151
Facsimile: 208-384-0442
ISB # 1615
ISB # 4931
Attorneys for Plaintiff

DOCKETED

Lewis County District Court
FILED
AT 1:10 O'CLOCK PM

OCT 06 2005

CATHY LARSON
Clerk of District Court
By Juna D Stapleton
Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G CARROLL,

Defendant.

Case No. CV-2005-153

COMPLAINT

COMES NOW the Plaintiff above named and for cause of action against the Defendant, complains and alleges as follows:

I

That the Plaintiff is now and at all times pertinent hereto was a foreign corporation with its principal place of business located outside Idaho.

This communication is from a debt collector, the purpose of which is to collect a debt; any information obtained may be used for that purpose.

II

That the Defendant at all times pertinent hereto was a resident of the County of LEWIS, State of Idaho.

III

That the Plaintiff is the owner of an account obligation or debt receivable originally owed by the Defendant to Citi Cards, account # xxxx-xxxx-xxxx-2596, which principal account balance currently totals $24,567.91.

IV

That said account was due and payable within thirty (30) days after receipt of a statement of account.

V

That Defendant is in breach of said Account Agreement by reason of their failure to make all required monthly payments in a timely fashion. As a result of such breach, Plaintiff has declared the entire amount due and payable in full.

VI

That the Plaintiff, by reason of Defendant's failure to pay the account above stated, has been required to retain the services of counsel and has retained the firm of Wilson & McColl to prosecute this action. Further, that should Plaintiff be successful in this action, that Defendant, in addition to being responsible for Plaintiff's costs incurred herein, should be responsible for Plaintiff's reasonable attorney's fees incurred herein pursuant to Idaho Code § 12-120(3). That a reasonable attorney's fee, should this action be uncontested, is the sum of $630.00; and further, that should said action be

contested, the sum of $135.00 per hour for time expended on Plaintiff's behalf is a reasonable attorney's fee herein.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. For the sum of $24,567.91;

2. For Plaintiff's reasonable attorney's fees incurred herein pursuant to Idaho Code § 12-120(3), in the amount of $630.00, should this matter be uncontested; otherwise, the sum of $135.00 per hour for the time expended on behalf of Plaintiff herein, should said action be contested;

3. For Plaintiff's costs incurred herein; and,

4. For such other and further relief as to the Court may appear just.

DATED This 19 day of September, 2005.

WILSON McCOLL & RASMUSSEN

By _____
Jeffrey M. Wilson
Of The Firm

This communication is from a debt collector, the purpose of which is to collect a debt; any information obtained may be used for that purpose.

JEFFREY M. WILSON, ISB No. 1615
LISA B. RASMUSSEN, ISB No. 4931
WILSON, McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, Idaho 83701
Telephone: (208) 345-9100
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

CITIBANK (SOUTH DAKOTA), N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant.	CV37067 Case No.CV-2005-153 ORDER GRANTING CHANGE OF VENUE TO IDAHO COUNTY

Upon reading the Stipulation of the parties and good cause appearing therefor;

IT IS HEREBY ORDERED That change of venue be granted; and the Clerk of the District Court is hereby directed to transfer the records, pleadings and file in the above entitled matter to the Clerk of the District Court for Idaho County.

DATED This 22 day of January, 2006.

JOHN BRADBURY
JUDGE

JEFFREY M WILSON, ISB No. 1615
LISA B. RASMUSSEN, ISB No. 4931
WILSON McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, ID 83701
Telephone: 208-345-9151
Facsimile: 208-384-0442
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff vs. MIRIAM G CARROLL, Defendant.	Case No. CV2006-37067 ENTRY AND ORDER OF DEFAULT

IT APPEARING That the Defendant herein was duly and regularly served with process and having failed to appear and plead to the Complaint on file herein, and it further appearing from the Affidavit of JEFFREY M. WILSON that the above named Defendant is not in the military services of the United States of America, as defined by Section 101(1) of the Servicemembers Civil Relief Act (SCRA), nor is said Defendant a minor or incompetent person.

IT IS THEREFORE ORDERED That the default of said Defendant may be entered according to law.

DATED This 16 day of March, 2006.

Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of March, 2006, I mailed a true and correct copy of the foregoing ORDER FOR DEFAULT by regular United States mail with the correct postage affixed thereon addressed to:

JEFFREY M. WILSON
LISA B. RASMUSSEN
WILSON McCOLL & RASMUSSEN
P.O. BOX 1544
BOISE, ID 83701

Miriam G Carroll
Hc11 Box 366
Kamiah ID 83536-9410

Rose E. Gehring, Clerk

Kathy Johnson
DEPUTY CLERK

JEFFREY M. WILSON, ISB No. 1615
LISA B. RASMUSSEN, ISB No. 4931
WILSON McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, ID 83701
Telephone: 208-345-9151
Facsimile: 208-384-0442
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G CARROLL, Defendant.	)	Case No. CV2006-37067 JUDGMENT

IN THIS ACTION, The Defendant, Miriam G Carroll, having been regularly served with process and having failed to appear and plead to Plaintiff's Complaint on file herein as required by law, the address most likely to give Defendant notice being Hc11 Box 366, Kamiah ID 83536-9410, and the default of the said Defendant having been entered herein, and the matter coming on regularly to be heard, the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Plaintiff have and recover from the Defendant judgment as follows:

Principal	$24,567.91
Costs	137.00
Attorney's fees	630.00
Payments made since complaint filed	0.00
Total judgment	$25,334.91

Said judgment in the amount of $25,334.91 to bear interest at the statutory rate from the date hereof.

DATED This 16 day of March, 2006.

JOHN BRADBURY
Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of March, 2006, I mailed a true and correct copy of the foregoing *JUDGMENT* by regular United States mail with the correct postage affixed thereon addressed to:

JEFFREY M. WILSON
LISA B. RASMUSSEN
WILSON McCOLL & RASMUSSEN
P.O. BOX 1544
BOISE, ID 83701

Miriam G Carroll
Hc11 Box 366
Kamiah ID 83536-9410

Rose E Gehring, Clerk

KATHY JOHNSON
DEPUTY CLERK

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:49 O'CLOCK P.M.
APR 20 2006
ROSE E. GEHRING
CLERK OF DISTRICT COURT
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.

Plaintiff,

vs.

MIRIAM G. CARROLL

Defendant,

Case No. **CV-2006-37067**

ORDER

Having heard the evidence presented to this court Re: Defendant's Motion to set aside Default Judgment, this court orders that the Defendant's Motion to set aside Default Judgment is GRANTED. The Default Judgment is hereby SET ASIDE, and entry of the Default Judgment is SET ASIDE.

Dated this 20 day of April, 2006

Judge of the District Court

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN ANF FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

ANSWER TO COMPLAINT

COMES NOW the Defendant, Miriam G. Carroll, and answers the complaint against her as follows:

1. That the plaintiff is now and at all times pertinent hereto was a foreign corporation with its principle place of business located outside Idaho.

   ANSWER: To the best knowledge of the Defendant, this is true.

2. That the defendant at all times pertinent hereto was a resident of the County of LEWIS, State of Idaho.

   ANSWER: The defendant is not, and has not, been a resident of

LEWIS County, State of Idaho. The Defendant is a resident of IDAHO County, State of Idaho.

3. That the Plaintiff is the owner of an account obligation or debt receivable originally owed by the Defendant to Citi Cards, account # xxxx-xxxx-xxxx-2596, which principle account balance currently totals $24,576.91

   ANSWER: Denied

4. That said account was due and payable within thirty (30) days after receipt of a statement of account.

   ANSWER: Denied

5. That Defendant is in breach of said Account Agreement by reason of their failure to make all required monthly payments in a timely fashion. As a result of such breach, Plaintiff has declared the entire amount due and payable in full.

   ANSWER: The Defendant denies that she is in breach of the agreement.

6. That the Plaintiff, by reason of Defendant's failure to pay the account above stated, has been required to retain the services of counsel and has retained the firm of Wilson, McColl & Rasmussen to prosecute this action.

   ANSWER: The Defendant denies that she has failed to pay the account above stated. The Defendant also denies that the Plaintiff has been required to retain the services of counsel.

The Defendant asserts that the Plaintiff comes to this court with "dirty hands", and makes the following counterclaims:

A. That on or about the 28th day of December, 2004, the Defendant sent a letter conforming to the requirements of the Truth In Lending Act [TILA], specifically Title 15 USC § 1666(D)(b)(4) and Title 12 CFR § 226.13(a)(4), and 226.13(b)(1), (2) and (3), regarding the Defendant's belief that the statement of December 16th, 2004 was inaccurate.

B. That Citibank received this letter on or about the 3rd day of January, 2005 at the address indicated by Citibank for billing disputes.

C. That more than 90 days have passed and Citibank has failed to act in accordance with Title 15 USC § 1666(D)(a)(b)(i) or (ii), and Title 12 CFR § 226.13(c)(1) and (2)

D. That on or about the 7th day of January, 2005, Citibank closed the Defendant's account in violation of Title 15 USC § 1666(c)(i), and Title 12 CFR § 226.13(d)(1)

E. That on or about the 13th day of May, the Defendant pulled a credit report from Experian, and found that Citibank had made an adverse credit report in violation of Title 15 USC § 1666(a)(2) and Title 12 CFR § 226.12(d)(2).

F. That on or about the 3rd day of June, 2005, the Defendant sent a letter to Citibank requesting that Citibank correct the errors on the Defendant's credit report.

G. That Citibank received this letter on or about the 9th day of June, 2005, and has failed to correct its errors as required by law.

H. That Citibank had also failed to indicate to Experian that the account was in dispute as required by Title 15 USC § 1666(b) and Title 12 CFR § 226.13(g)(4)(i), and has also violated the Fair Credit Reporting Act [FCRA], Title 15 USC § 1681(a), and §1681c(e)(f)

I. That Citibank then proceeded to collections against the Defendant in violation of Title 12 CFR § 226.13(d)(1).

J. That the Defendant has acted within the law, specifically, Title 12 CFR § 226.13(d)(1), and within the agreement with Citibank by withholding the disputed amount until Citibank complied with its responsibilities under TILA.

WHEREFORE, Defendant prays that this Court will:

1. Dismiss Plaintiff's Complaint with prejudice;
2. Award Defendant its fees and costs;
3. Award such further relief as the Court deems appropriate.

Dated this 24TH day of April, 2006

Miriam G. Carroll

Miriam G. Carroll, Defendant *in propria persona*

CERTIFICATE OF MAILING

I, Miriam G. Carroll, do hereby certify that I mailed a true and correct copy of the ANSWER TO COMPLAINT to the Plaintiff by Certified Mail #7005 1160 0002 7630 1940 on this 24th day of April, 2006 at the following address:

Lisa B. Rasmussen
Wilson, McColl & Rasmussen
420 W. Washington
P.O. Box 1544
Boise, ID 83701

Miriam G. Carroll

Miriam G. Carroll

JEFFREY M. WILSON, ISB No. 1615
LISA B. RASMUSSEN, ISB No. 4931
WILSON McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, Idaho 83701
Telephone: 208-345-9151
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,	)	
	)	
Plaintiff,	)	Case No. CV2006-37067
	)	
vs.	)	REPLY TO COUNTERCLAIM
	)	
MIRIAM G CARROLL,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Counter-Defendant, Citibank (South Dakota) N.A., and replies to the Counter-Claim herein as follows:

Counter-Defendant denies each and every allegation of the counterclaim.

DATED this 24 day of May, 2006.

WILSON McCOLL & RASMUSSEN

By _____
LISA B. RASMUSSEN
Attorney for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24 day of May, 2006, I mailed a true and correct copy of the foregoing REPLY TO COUNTERCLAIM by regular United States mail with the correct postage affixed thereon addressed to:

Miriam G. Carroll
HC 11 Box 366
Kamiah, ID 83536-9410

JEFFREY M. WILSON, ISB No.1615
LISA B. RASMUSSEN, ISB No.4931
WILSON, McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, Idaho 83701
Telephone: 208-345-9151
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G CARROLL, Defendant.	Case No. CV2006-37067 ORDER AMENDING COMPLAINT

The above matter having come before this Court upon the Motion to Amend Complaint, and good cause appearing;

IT IS HEREBY ORDERED that the pleadings in this matter are amended to reflect the status of the Plaintiff as a national bank.

DATED this 15 day of June, 2006.

JUDGE

JEFFREY M. WILSON, ISB No.1615
WILSON & McCOLL
420 W. Washington
P.O. Box 1544
Boise, Idaho 83701
Telephone: 208-345-9151
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,	)	
	)	
Plaintiff,	)	Case No. CV2006-37067
	)	
vs.	)	ORDER
	)	
MIRIAM G CARROLL,	)	
	)	
Defendant.	)	
	)	

Hearing was had upon the Defendant's Motion to Compel commencing at 9:00 a.m. June 23, 2006. The Defendant appeared in person, the Plaintiff appeared through its counsel via telephone conference. The court having heard the argument of the parties and having reviewed this matter, and good cause appearing;

IT IS HEREBY ORDERED AND THIS DOES ORDER that the Plaintiff produce the following documents and/or provide the following information, no later than the close of business July 28, 2006:

1. A copy of the underlying account contract;
2. A copy of the account application submitted to Plaintiff;
3. The identity of Plaintiff's record custodian; and,

4. Admit or Deny Defendant's Requests to Admit.

DATED this 29 day of June, 2006.

JUDGE

CLERK'S CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of June, 2006, I mailed a true and correct copy of the foregoing ORDER by regular United States mail with the correct postage affixed thereon addressed to:

Jeffrey M. Wilson
Wilson and McColl
P.O. Box 1544
Boise, ID 83701

Miriam G, Carroll
HC 11 Box 366
Kamiah ID 83536

Rose E Gehring, Clerk
Kathy Johnson, Deputy

JEFFREY M. WILSON, ISB No. 1615
LISA B. RASMUSSEN, ISB No. 4931
WILSON McCOLL & RASMUSSEN
420 W. Washington
P.O. Box 1544
Boise, ID 83701
Telephone: 208-345-9151
Facsimile: 208-384-0442
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G CARROLL,

Defendant.

Case No. CV-2006-37067

AMENDED COMPLAINT

COMES NOW the Plaintiff above named and for cause of action against the Defendant, complains and alleges as follows:

I

That the Plaintiff is now and at all times pertinent hereto was a national bank with its principal place of business located outside Idaho.

II

That the Defendant at all times pertinent hereto was a resident of the County of IDAHO, State of Idaho.

This communication is from a debt collector, the purpose of which is to collect a debt; any information obtained may be used for that purpose.

III

That the Plaintiff is the owner of an account obligation or debt receivable originally owed by the Defendant to Citi Cards, account No. xxxx-xxxx-xxxx-2596, which principal account balance currently totals $25,334.91.

IV

That said account was due and payable within thirty (30) days after receipt of a statement of account.

V

That Defendant is in breach of said Account Agreement by reason of their failure to make all required monthly payments in a timely fashion. As a result of such breach, Plaintiff has declared the entire amount due and payable in full.

VI

That the Plaintiff, by reason of Defendant's failure to pay the account above stated, has been required to retain the services of counsel and has retained the firm of Wilson & McColl to prosecute this action. Further, that should Plaintiff be successful in this action, that Defendant, in addition to being responsible for Plaintiff's costs incurred herein, should be responsible for Plaintiff's reasonable attorney's fees incurred herein pursuant to Idaho Code § 12-120(3). That a reasonable attorney's fee, should this action be uncontested, is the sum of $630.00; and further, that should said action be contested, the sum of $135.00 per hour for time expended on Plaintiff's behalf is a reasonable attorney's fee herein.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. For the sum of $25,334.91, together with prejudgment interest thereon;

2. For Plaintiff's reasonable attorney's fees incurred herein pursuant to Idaho Code § 12-120(3), in the amount of $630.00, should this matter be uncontested; otherwise, the sum of $135.00 per hour for the time expended on behalf of Plaintiff herein, should said action be contested;

3. For Plaintiff's costs incurred herein; and,

4. For such other and further relief as to the Court may appear just.

DATED This 5 day of July, 2006.

WILSON & McCOLL

By _____
JEFFREY M. WILSON
Of The Firm

This communication is from a debt collector, the purpose of which is to collect a debt; any information obtained may be used for that purpose.

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant,	Case No. **CV-2006-37067** **AMENDED ANSWER TO COMPLAINT WITH COUNTERCLAIMS**

COMES NOW the Defendant, Miriam G. Carroll, and answers the complaint against her as follows:

I

The Defendant admits that the Plaintiff is now and at all times pertinent hereto was a national bank with its principle place of business located outside Idaho.

II

The Defendant admits that at all times pertinent hereto she was a resident of the County of Idaho, State of Idaho.

III

The Defendant admits that the Plaintiff is the owner of an account obligation or debt receivable originally owed by the Defendant to Citi Cards, account No. xxxx-xxxx-xxxx-2596. The Defendant denies that the current balance totals $25,334.91.

IV

The Defendant denies that said account was due and payable within thirty (30) days after receipt of a statement of account. The account is in dispute, and as such does not become due or payable until the dispute is resolved.

V

The Defendant denies that she is in breach of said Account Agreement. The Defendant has not failed to make all required monthly payments in a timely fashion. The Defendant properly notified Citi Cards (Citibank) of a billing error dispute, and after properly notifying Citi Cards (Citibank) of her right and intention to withhold payment of the disputed amount under Title 12 CFR § 226.13(d)(1), has withheld payment as provided by law.

VI

The Defendant denies that the Plaintiff has been required to retain the services of counsel, and that such expense is not necessary and that she cannot be held responsible for such expense.

The Defendant asserts that the Plaintiff comes to this court with "dirty hands", and makes the following counterclaims:

COUNTERCLAIMS

1. That on or about the 28th day of December, 2004, the Defendant sent a letter conforming to the requirements of the Truth In Lending Act [TILA], specifically Title 15 USC §§ 1666(a), and (b)(4), and Title 12 CFR §§ 226.13(a)(4), and (b)(1),(2) and (3), regarding the Defendant's belief that the statement of December 16th, 2004 was inaccurate.
2. That Citibank received this letter on or about the 3rd day of January, 2005 at the address indicated by Citibank for billing disputes.
3. That more than 90 days have passed and Citibank has failed to act in accordance with Title 15 § 1666(a)(B)(i) or (ii), and Title 12 CFR § 226.13(c)(1) or (2).
4. That on or about the 7th day of January, 2005, Citibank closed the Defendant's account in violation of Title 15 USC § 1666(d), and Title 12 CFR § 226.13.
5. That on or about the 7th day of January, 2005, Citibank accelerated the Defendant's indebtedness in violation of Title 12 CFR § 226.13.
6. That on or about the 13th day of May, the Defendant pulled a credit report from Experian, and found that Citibank had made an adverse credit report in violation of Title 15 USC § 1666a(a) and (b) and Title 12 CFR § 226.13(d)(2).

7. That on or about the 3rd day of June, 2005, the Defendant sent a letter to Citibank requesting that Citibank correct the errors on the defendant's credit report.
8. That Citibank received this letter on or about the 9th day of June, 2005, and has failed to correct its errors as required by law.
9. That Citibank had also failed to indicate to Experian, and others, that the account was in dispute as required by Title 15 USC § 1666a(a) and (b), Title 12 CFR § 226.13(g)(4)(i), and has also violated the Fair Credit Reporting Act [FCRA], Title 15 USC § 1681(a), and §1681c(e)(f).
10. That Citibank then proceeded to collections against the Defendant in violation of Title 15 USC § 1666(c)(1) and (2), and Title 12 CFR § 226.13(d)(1).
11. That Citibank committed the tort of negligence *per se* comprised of the following elements:
    (a) That the Plaintiff had, and continues to have, a duty of care to the Defendant as specified in Title 15 USC § 1666(a)(2) and Title 12 CFR § 226.13(d)(2).
    (b) That during the month of May, 2005, the Plaintiff breached that duty of care by making an adverse credit report specifically prohibited by the above statute. That on or about the 3rd day of June, 2005, the Defendant sent a letter to Citibank requesting that Citibank correct the errors on the Defendant's credit report. That Citibank received this letter on or about the 9th day of June, 2005, and has failed to

correct the errors as required by law. And that the breach of duty of care continues to the present day.

(c) That the Defendant's reputation and financial condition were harmed as a direct result of Citibank's breach of its duty of care, and,

(d) That the harm caused by the adverse credit report continues to the present day.

12. That Citibank committed the tort of Willful and Wanton Misconduct, comprised of the following elements:

(a) That the Plaintiff had, and continues to have, a duty of care to the Defendant as specified in Title 15 USC § 1666(a)(2) and Title 12 CFR § 226.13(d)(2).

(b) That the Plaintiff breached that duty of care willfully, when the Plaintiff either knew, or should have known that its actions were certain to cause harm or injury to the Defendant; and willfully, with wanton disregard to the harm and injury to the Defendant, proceeded with its breach of duty of care.

(c) That when notified in writing, of the harm it was doing to the Defendant, willfully and wantonly disregarded its duty of care, refusing to correct the damaging action, and,

(d) Continues to this day to engage in this damaging act against the Defendant, and the Defendant continues to be harmed by the Plaintiff's actions.

WHEREFORE, the Defendant prays that this court will:

1. Dismiss the Plaintiff's complaint against the Defendant.
2. Award statutory damages for each violation of TILA in accordance with Title 15 § 1640(a)(2)(A)(i), which is twice the finance charge in connection with the transaction (finance charge, as disclosed by Citibank is $4,461.91).
3. Award damages in the amount of $25,000 for negligence *per se.*
4. Award punitive damages as the court deems just for Willful and Wanton Misconduct.

Dated this 14TH day of August, 2006.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, Miriam G. Carroll, do hereby certify that I mailed a true and correct copy of my AMENDED ANSWER TO COMPLAINT to the attorney for the Plaintiff, by Certified Mail # 7003 0500 0005 3304 9416 this 14TH day of August, 2006, with proper postage prepaid and affixed thereon, at the following address:

Jeffrey M. Wilson
Wilson & McColl
420 W. Washington
P.O. Box 1544
Boise, ID 83701

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

-11-20

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant.

Case No. CV-2006-37067

ORDER GRANTING MOTION FOR CONTINUED HEARING DATE

Upon consideration of Plaintiff, Citibank (South Dakota), N.A.'s, ("Citibank"), Motion for Continued Hearing Date, and for good cause shown, this Court hereby ORDERS:

That the hearing for Defendant, *Miriam G. Carroll's Motion for for an Evidentiary* Hearing on Defendant's Dispute Letter ("Defendant's Motion") is hereby continued from August 31, 2006 to September 14, 2006, at 4:00 p.m., pst. Provided that the parties do not intend to present any witnesses, counsel or the respective parties may attend the hearing by telephone.

DATED THIS 24 day of August, 2006.

By _____
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2006, I caused to be served a true copy of the foregoing MOTION FOR CONTINUED HEARING DATE by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

_X_ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

_X_ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Rose E Gehring
Clerk of the Court
by: Kathy Johnson, Deputy

Sheila R. Schwager, ISB No. 5059
D. John Ashby, ISB No. 7228
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: srs@hteh.com
jash@hteh.com

Attorneys for Citibank (South Dakota) N.A.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff/Counterdefendant vs. MIRIAM G. CARROLL, Defendant/Counterclaimant.	Case No. CV-2006-37067 ANSWER TO AMENDED COUNTERCLAIMS

Plaintiff/Counterdefendant Citibank (South Dakota) N.A., ("Citibank"), by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, hereby answers Defendant/Counterclaimant Miriam G. Carroll's Amended Counterclaims (collectively referred to hereafter as "Counterclaim") as follows:

FIRST DEFENSE

Carroll's Counterclaim, and each and every claim and allegation thereof, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Citibank denies each allegation contained in Carroll's Counterclaim unless expressly and specifically admitted herein.

ANSWER TO COUNTERCLAIM

1. In answering paragraph 1 of Carroll's Counterclaim, Citibank admits that it received a letter dated December 28, 2004, which speaks for itself. Citibank denies all remaining allegations set forth in paragraph 1 of Carroll's Counterclaim.

2. In answering paragraph 2 of Carroll's Counterclaim, Citibank admits that it received the December 28, 2004 letter referenced in paragraph 1 of Carroll's counterclaim, but is without knowledge or information sufficient to form a belief as to the truth of Carroll's remaining allegations, and therefore on that basis, denies the same.

3. In answering paragraph 3 of Carroll's Counterclaim, Citibank denies the same.

4. In answering paragraph 4 of Carroll's Counterclaim, Citibank admits that it informed Carroll that it was closing her account due to her refusal to pay. Citibank denies all remaining allegations set forth in paragraph 4 of Carroll's Counterclaim.

5. In answering paragraph 5 of Carroll's Counterclaim, Citibank admits that it informed Carroll that it was closing her account due to her refusal to pay. Citibank denies all remaining allegations set forth in paragraph 5 of Carroll's Counterclaim.

6. In answering paragraph 6 of Carroll's Counterclaim, Citibank is without knowledge or information sufficient to form a belief as to the truth of Carroll's allegations as to the Defendant pulling a credit report from Experian, and therefore on that basis, denies the same. Citibank expressly asserts that any and all credit reporting by Citibank as to the Carroll's account

was accurate and not in violation of the Title 15 USC § 1666(a) and (b) and Title 12 CFR § 226.13(d)(2).

7. In answering paragraph 7 of Carroll's Counterclaim, Citibank admits that it received a letter from Carroll dated June 3, 2005, which speaks for itself. Citibank denies all remaining allegations set forth in paragraph 7 of Carroll's Counterclaim.

8. In answering paragraph 8 of Carroll's Counterclaim, Citibank admits that it received Carroll's June 3, 2005 letter on or about June 9, 2005. Citibank denies all remaining allegations set forth in paragraph 8 of Carroll's Counterclaim.

9. In answering paragraph 9 of Carroll's Counterclaim, Citibank asserts that it is unable to admit or deny the allegations set forth in paragraph 9, as they state conclusions of law or legal principals asserted by Carroll and not allegations of fact, to which an admission or denial is required by the Idaho Rules of Civil Procedure. To the extent any response is required, Citibank denies the same.

10. In answering paragraph 10 of Carroll's Counterclaim, Citibank admits that it attempted to collect Carroll's overdue and delinquent credit card account. Citibank denies all remaining allegations set forth in paragraph 10 of Carroll's Counterclaim.

11. In answering paragraph 11 and 11(a-d) of Carroll's Counterclaim, Citibank denies the same.

12. In answering paragraph 12 and 12(a-d) of Carroll's Counterclaim, Citibank denies the same.

ANSWER TO PRAYER FROM RELIEF

13. In response to paragraphs 1 through 4 set forth in Carroll's prayer for relief, Citibank denies that Carroll is entitled to any of the claims for relief sought.

ANSWER TO PUNITIVE DAMAGES CLAIM

14. In response to Carroll's claim for punitive damages set forth in her prayer for relief, Carroll's Counterclaim fails to state facts sufficient to support an award of punitive or exemplary damages against Citibank. Moreover, Carroll's Counterclaim violates the provisions of I.C. § 6-1604(2), and should thus be stricken. I.C. § 6-1604 provides that no claim for punitive damages should be included in a prayer for relief, but, rather, that a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages, provided that the court permits such amendment. Carroll's claim for punitive damages should, therefore, be stricken.

THIRD DEFENSE

Plaintiff is barred from maintaining this counterclaim because her billing error dispute letter was untimely pursuant to 12 C.F.R. § 226.13(b)(1), 15 USC § 1666, § 1681. and/or any other applicable statute of limitations.

FOURTH DEFENSE

Plaintiff is barred from maintaining this counterclaim because her letter did not assert a valid billing error dispute pursuant to 15 USC § 1666.

FIFTH DEFENSE

Carroll's Counterclaim against Citibank is barred because she failed to satisfy the requisite conditions precedent to the imposition of obligations or recovery of damages under the *Fair Credit Reporting Act.*

SIXTH DEFENSE

Carroll's Counterclaim against Citibank is barred because any actions made by Citibank were protected by a conditional or qualified privilege, including but not limited to the common interest privilege.

SEVENTH DEFENSE

Carroll's damages, if any, (Citibank specifically denies that Carroll has suffered any damages), were caused in whole or in part by acts or omissions of persons other than Citibank.

EIGHTH DEFENSE

Carroll's Counterclaim is preempted by federal law.

NINTH DEFENSE

Carroll is barred from maintaining this Counterclaim because Carroll, by failing to act reasonably, has failed to mitigate her damages to which Carroll claims entitlement (Citibank specifically denies that Carroll has suffered any damages).

TENTH DEFENSE

Carroll is barred from maintaining the Counterclaim by reason of Carroll's own negligence or other wrongful conduct which caused the purported injuries alleged in the Counterclaim.

ELEVENTH DEFENSE

Carroll is barred from maintaining her Counterclaim based upon the doctrine of laches.

TWELFTH DEFENSE

Carroll is barred from maintaining her Counterclaim based upon the doctrine of waiver.

THIRTEENTH DEFENSE

Carroll is barred from maintaining her Counterclaim based upon the doctrine of estoppel.

FOURTEENTH DEFENSE

Carroll is barred from maintaining her Counterclaim because Citibank's acts were justified.

FIFTHTEENTH DEFENSE

Carroll's recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

SIXTEENTH DEFENSE

Carroll is barred from maintaining this action against Citibank because Citibank's actions were taken with Carroll's consent in accordance with the terms of the cardholder agreement.

SEVENTEENTH DEFENSE

In the unlikely event that Citibank is found liable for damages, Citibank is entitled to a setoff or credit for amounts that Carroll owes to Citibank.

EIGHTEENTH DEFENSE

Some or all of the claims may be subject to an arbitration agreement.

NINETEENTH DEFENSE

The tort claims fail because there were no independent torts outside of the parties' contract.

TWENTIETH DEFENSE

The claim for punitive damages is barred or otherwise limited by applicable law.

RULE 11 STATEMENT

Citibank has considered and believes that it may have additional defenses, but does not have enough information at this time to assert additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Citibank does not intend to waive any such defense and specifically

asserts its intention to amend its Answer if, pending research and after further discovery, facts come to light giving rise to such additional defenses.

WHEREFORE, Citibank prays for judgment, decree and order of this Court as follows:

(1) That Carroll's Counterclaim be dismissed with prejudice as against Citibank and that Carroll take nothing thereunder;

(2) That Citibank be granted judgment, as requested in its complaint, plus costs, expenses and attorney fees pursuant to contract, Idaho Code § 12-120, § 12-121, and all other applicable law; and

(3) That Citibank be granted such other equitable or legal relief as this Court may deem just, reasonable and proper.

DATED THIS 5th day of September, 2006.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Sheila R. Schwager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2006, I caused to be served a true copy of the foregoing Answer to amended Counterclaims by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

____ U.S. Mail, Postage Prepaid
_____ Hand Delivered
_XX_ Overnight Mail –Fed Ex
_____ Telecopy
_____ Email

Sheila R. Schwager

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

Citibank (South Dakota) N.A.,	CASE NO. CV 06-37067
Plaintiff,	SCHEDULING ORDER
vs.	
Miriam G. Carroll,	
Defendant.	

IT IS SO ORDERED THAT:

1. The jury trial shall commence on April 16, 2007 at 8:30 a.m. and will continue each day until 1:30 p.m. with two 15-minute breaks.

2. A pretrial conference is set for April 5, 2007 at 3:00 p.m., **Pacific Time,** at the District Court Chambers, Idaho County Courthouse, 320 West Main, Grangeville, Idaho.

3. The parties shall file a Rule 16(e), I.R.C.P. pretrial stipulation in the format of the attached proposed pretrial order, not later than April 3, 2007.

4. The parties shall schedule any and all motions for hearing not later than March 29, 2007.

5. Discovery shall be completed not later than March 15, 2007.

Entered by the Direction of the Court.

DATED this 15th day of September 2006.

Rose E. Gehring, Clerk

Kathy Johnson

Kathy Johnson, Deputy

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing SCHEDULING ORDER, was mailed, postage prepaid, or hand delivered by the undersigned at Grangeville, Idaho, this 15th day of September 2006, on:

Sheila Schwager
Attorney at Law
P.O. Box 1617
Boise, ID 83701-1617

Miriam Carroll
HC 11 Box 366
Kamiah, ID 83536

ROSE E. GEHRING, Clerk

By: Kathy Johnson
Deputy Clerk

FORM FOR PRETRIAL ORDER

The following form of pretrial order shall be used, insofar as possible, in the trial of all civil cases except those involving land condemnation.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

_____,	)	CASE NO. CV_____
	)	
	)	
Plaintiff,	)	PRETRIAL ORDER
	)	
vs.	)	
	)	
_____,	)	
	)	
Defendant.	)	

_____

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims: (E.g., breach of contract, violation of Idaho Code § 48-603(6). The defendant will pursue the following affirmative defenses and/or claims: (E.g., accord and satisfaction, estoppel, waiver).

ADMITTED FACTS

The following facts are admitted by the parties: (Enumerate every agreed fact, irrespective of admissibility, but with notation of objections as to admissibility. List 1, 2, 3, etc.)

The plaintiff contends as follows: (List 1, 2, 3, etc.)

The defendant contends as follows: (List 1, 2, 3, etc.)

(State contentions in summary fashion, omitting evidentiary detail. Unless otherwise ordered by the court, the factual contentions of a party shall not exceed two pages in length. Examples of properly and improperly drafted contentions are set forth below)

ISSUES OF LAW

The following are the issues of law to be determined by the court: (List 1, 2, 3, etc., and state each issue of law involved. A simple statement of the ultimate issue to be decided by the court, such as "Is the plaintiff entitled to recover?" will not be accepted.) If the parties cannot agree on the issues of law, separate statements may be given in the pretrial order.

EXPERT WITNESSES

(a) Each party shall be limited to _____ expert witness(es) on the issues of _____.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff;

(2) On behalf of defendant.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff: (E.g., Jane Doe, 10 Elm Street, Seattle, WA; will testify concerning formation of the parties' contract, performance, breach and damage to plaintiff.)

(b) On behalf of defendant: (follow same format).

(As to each witness, expert or others, indicate "will testify," or "possible witness only." Also indicate which witnesses, if any, will testify by deposition. Rebuttal witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial, need not be named.)

EXHIBITS

(a) Admissibility stipulated:

Plaintiff's Exhibits
1. Photo of curve in the highway. (Examples)
2. Photo of guardrails.
3. Photo of speed advisory sign.

Defendant's Exhibits
A-1. Weather report. (Examples)
A-2. Highway maintenance record
A-3. X-ray of plaintiff's foot.
A-4. X-ray of wrist.

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits
4. Inventory Report. (Examples)

Defendant's Exhibits
A-5. Photograph. (Examples)

(c) Authenticity and admissibility disputed:

Plaintiff's Exhibits
5. Accountant's report. (Examples)

Defendant's Exhibits
A-6. Doctor's report.

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See below for further explanation of numbering of exhibits).

ACTION BY THE COURT

(a) This case is scheduled for trial (before a jury) (without a jury) on _____, 20___, at _____.

(b) Trial briefs shall be submitted the court on or before _____.

(c) Jury instructions requested by either party shall be submitted to the court on or before _____. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before _____.

(d) (Insert any other ruling made by the court at or before pretrial conference.)

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this _____ day of _____, 20____.

_____
JOHN H. BRADBURY
DISTRICT JUDGE

FORM APPROVED

_____
Counsel for Plaintiff

_____
Counsel for Defendant

(2) Drafting of Contentions. Statement of contentions as to disputed facts should be brief and generally worded.

The purpose of this section of the order is to apprise the court and other parties of the general position of each party on major facts issues. Lengthy recitals and evidentiary detail are of little assistance, and serve only to impose unnecessary burdens upon the lawyer drafting them.

For example:

Proper:
1. Correspondence between the parties in November and December, 1982, established the price, quantity and time of delivery of the goods.

Improper:

1. On November 3, plaintiff wrote to defendant, stating _____ (etc.)

2. On November 7, 1982, defendant responded _____ (etc.)

3. On November 12, 1982, plaintiff replied _____ (etc.)

Proper:

1. Defendant was negligent in that: (a) the stabilizer on the aircraft was defectively designed; and (b) the airline was not given proper instructions as to maintenance and inspection of the stabilizer.

Improper:

1. The stabilizer on the aircraft was 117 inches in length and _____(etc.)

2. Accepted industry standards provide that stabilizers must be _____(etc.)

3. At an air speed of 570 mph, a stabilizer _____(etc.)

4. Defendant distributed service bulletin on the stabilizer on _____(etc.)

Proper:

1. Plaintiff's discharge was due to unsatisfactory performance of her job and insubordination to her supervisors. It was unrelated to her sex.

Improper:

1. Plaintiff made an error in balancing accounts on July 5, 1980, resulting in cost of $7,300 to defendant.

2. Defendant attempted to provide plaintiff training and counseling about his incident, but she refused.

3. On August 13, 1980, plaintiff again _____(etc.)

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff,

vs

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

MOTION TO COMPEL DISCOVERY

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll"), and moves this court to compel the Plaintiff, Citibank (South Dakota) N.A. (hereinafter "Citibank") to answer her discovery requests pursuant to rule 33, 34 and 36 of the Idaho Rules of Civil Procedure. This motion is necessary because Citibank's answers to discovery are evasive in violation of Rule 37(a)(3) of the Idaho Rules of Civil Procedure. Citibank has not answered a majority of Carroll's interrogatories. Carroll has sent two "meet and confer" letters to Citibank in an attempt to resolve this situation. Citibank's response to the "meet and confer"

has also been evasive. It is therefore necessary for Carroll under Rule 36(a) of the Idaho Rules of Civil Procedure, to request that this court compel answers to the interrogatories, requests for production of documents, and requests for admissions, as follows:

CITIBANK'S GENERAL OBJECTIONS

1. Citibank objects to Carroll's Third Discovery Request to the extent that it seeks information and/or materials that are protected by the attorney-client privilege, the consulting expert witness privilege, the attorney work product doctrine, and/or any other applicable privilege or immunity.
2. Citibank objects to Carroll's Third Discovery Request to the extent that it seeks information and/or materials or to the extent that its instructions are beyond the scope of permissible discovery under the applicable rules of civil procedure.
3. Citibank objects to Carroll's Third Discovery request to the extent it implies or suggests that Citibank violated any laws or acted improperly, which implications Citibank denies.
4. Citibank objects to Carroll's third Discovery Request because it seeks confidential, proprietary and trade secret information.
5. Citibank specifically objects to Carroll's definitions of "money of account," which is defined as "credit, bank credit, promissory notes and other similar instruments," and "money of exchange," which is defined as "gold, silver, official currency notes, checks and drafts." These terms and their

definitions are incomprehensible, do not explain what Carroll is referring to and makes requests containing the terms unclear, confusing and vague.

6. By responding to Carroll's Third Discovery Request, Citibank does not waive: (a) any objections to the admissibility, competency, relevancy, materiality, or privilege attaching to any information provided; (b) the right to object to other discovery requests or undertakings involving or relating to the subject matter of the requests herein; or (c) the use of any of the responses or documents or the subject matter thereof in any subsequent proceeding or trial in this or any other action for any other purpose.
7. Citibank objects to Carroll's Third Discovery Request to the extent that it requires Citibank to produce information that is neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.
8. Citibank reserves the right to supplement its responses to Carroll's Third Discovery Request.

REBUTTAL OF GENERAL OBJECTIONS

1. Carroll has not requested any privileged information, or information which has immunity, from Citibank. Citibank has not identified any specific request as asking for privileged information, nor has Citibank identified any specific request for which Citibank has immunity.
2. Carroll has asked for relevant information within the scope of the Idaho Rules of Civil Procedure. Citibank has not provided any specific

information as to why any request should not be regarded as relevant, outside of a general objection unsupported by any explanation or reason.

3. Citibank has no right of immunity against any question which implies or suggests that Citibank violated any laws or acted improperly. Any right against self incrimination applies only to criminal procedure. An entity, such as Citibank, not being a natural person, has no protection against self incrimination in a civil case.
4. Banking is a highly regulated industry. The rules and regulations are in the public domain, as are the compliance and operations of Citibank. Citibank has no confidential information which Carroll has requested, nor does Citibank have any proprietary information which Carroll has requested. Trade secrets are processes, sequences and elements which protect a physical product from being duplicated by a competitor. Citibank, being a highly regulated company has no trade secrets, as any claim to a trade secret would only act to cover or hide illegal activities. Banks, to remain in relatively high regarded, and to maintain the public's confidence in the economic and monetary system must be open in their operation and procedures, not secretive.
5. Citibank's objection to the terms and definitions of "money of account" and *"money of exchange" is without merit. Money of account and money of* exchange are standard financial industry terms. Gold and silver coins and bullion have been the traditional system of money for thousands of years. Government issued and backed currency has traditionally been accepted

as money, as have checks and drafts (bills of exchange). All of these items function as money, or a means of exchange, in transactions throughout the world. They are noted for their transportability, negotiability, acceptance and reliability. Money of exchange has a physical item which either is or represents the existence of a physical reality. Money of account has no physical counterpart. Money of account consists of ledger entries and/or computer records. Money of account is represented by promissory notes, credit extended with or without collateral, and other forms of negotiable instruments where a promise is made in place of an unconditional order or agreement to pay. Citibank's statement that these terms and their definitions are incomprehensible is specious and amounts to deception and evasion on the part of a financial organization.

6. Citibank's objection to waiving other rights is duly noted.

INTERROGATORIES

INTERROGATORY NO. 2: Explain in detail the organizational and operational relationship between the following entities: Citicorp, Citibank (South Dakota) N.A., and Standard Credit Card Master Trust I.

ANSWER TO INTERROGATORY NO. 2: In addition to its General Objections, on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Citibank also objects to this request on the grounds that the phrase "Standard Credit Card Master trust

I" is vague, ambiguous and undefined such that it is unclear what information is being sought.

ARGUMENT AND REQUEST

Citibank cannot claim that "Standard Credit Card Master Trust I" is vague, ambiguous or undefined, as this is the name of the trust Citibank created to securitize its credit card assets. Carroll's request is relevant because Citibank placed its credit card accounts into the Standard Credit Card Master Trust I (and more recently Standard Credit Card Master Trust II) as security for certain investment instruments Citibank has issued. Citibank has filled the necessary forms with the Securities and Exchange Commission (SEC) and filed the required prospectus for each offering, a copy of which is available to the public through EDGAR, the electronic database of forms and applications filled with the SEC. By placing these credit card accounts into the trust, Citibank has effectively given up ownership and control of the credit card account. As such, Citibank is not a real party in interest in this action and/or has failed to join an essential party (the trust). Citibank therefore lacks standing and its lawsuit against Carroll is either defective or fraudulent. Carroll is entitled to the answer to her interrogatory to establish whether Citibank is entitled to continue this lawsuit, or whether the lawsuit is defective or fraudulent and needs to be amended or dismissed. Carroll therefore requests that this court order Citibank to answer Interrogatory No. 2.

INTERROGATORY NO. 3: Explain in detail how the ACCOUNT was created, funded, and made operational, including, but not limited to, all the uses

of, and/or references to the document shown in EXHIBIT A. This includes, but is not limited to, "bank credit" and anything which includes, refers to, or references the "discount window" of the Federal Reserve.

ANSWER TO INTERROGATORY NO. 3: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Citibank's complaint is a collection action for the outstanding obligation due and owing by Carroll pursuant to the terms of her credit card ACCOUNT, as "ACCOUNT" is defined in Carroll's Third Discovery Request. Carroll's counterclaim asserts causes of action for alleged violations of the Truth In Lending Act, negligence *per se*, and alleged willful and wanton conduct, all related to Carroll's purported "Billing Error Dispute Letter," which Citibank asserts is not a genuine "billing error" under the law and the impact of Carroll's alleged "signed note(s) or other similar instrument(s)," which Citibank asserts is not relevant because it is undisputed that Carroll made charges on the ACCOUNT, but failed to make required payments on the ACCOUNT. Citibank further objects to this request because it is vague, ambiguous and contains numerous undefined terms including "bank credit," "made operational" and "discount window." Subject to and without waiving its objections, see Carroll's application to create the ACCOUNT, which is attached as Exhibit A to Carroll's Third Discovery Request.

ARGUMENT AND REQUEST

Citibank's assertion that this request is not relevant to any claim in this litigation is disingenuous. Citibank, being the Plaintiff, is required to prove the elements of their claim. This includes demonstrating that Citibank created the *account following all appropriate rules and regulations (clean hands), of which* Carroll has the right to discover the veracity, or lack thereof, of the documents and conditions of the account and the bank's compliance with the rules and regulations, as these factors determine the validity of Citibank's claim. Citibank also posits that Carroll's request is not relevant because Citibank asserts that Carroll's "Billing Error Dispute Letter" is not valid. This assertion is irrelevant because the request relates to Citibank's claim, not any of Carroll's counterclaims. Citibank's assertion that it cannot answer the interrogatory because it is vague, ambiguous and contains numerous undefined terms including "bank credit," "made operational" and "discount window" is specious because the terms are standard financial industry terms. Any claim not to understand these terms by a financial organization is deceptive and evasive. Carroll therefore requests that this court order Citibank to answer Interrogatory No. 3.

INTERROGATORY NO. 4: Identify the person(s) responsible for, or involved in, the extension of "bank credit" or the "discount window" of the Federal Reserve in relation to, referencing, or referring to the ACCOUNT.

ANSWER TO INTERROGATORY NO. 4: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant

to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Citibank's complaint is a collection action for the outstanding obligation due and owing by Carroll pursuant to the terms of her credit card ACCOUNT. Carroll's counterclaim asserts causes of action for alleged violations of the Truth In Lending Act, negligence *per se*, and alleged willful and wanton conduct, all related to Carroll's purported "Billing Error Dispute Letter," which Citibank asserts is not a genuine "billing error" under the law and the impact of Carroll's alleged "signed note(s) or other similar instrument(s)," which Citibank asserts is not relevant because it is undisputed that Carroll made charges on the ACCOUNT, but failed to make required payments on the ACCOUNT. Citibank *further objects to this request because it is vague, ambiguous and contains* numerous undefined terms such that it is unclear what information is being sought. These terms include "bank credit" and "discount window."

ARGUMENT AND REQUEST

Citibank's assertion that this request is not relevant to any claim in this litigation is also disingenuous. The request is relevant to Citibank's claim that Citibank has been damaged, and thus has a cause of action against Carroll. Citibank's assertion that this request is not relevant to any counterclaims is irrelevant, as the request has to do with Citibank's claim. Citibank's assertion that it cannot answer the interrogatory because it is vague, ambiguous and contains numerous undefined terms including "bank credit," and "discount window" is specious because the terms are standard financial industry terms.

Any claim not to understand these terms by a financial organization is deceptive and evasive. Carroll therefore requests that this court order Citibank to answer Interrogatory No. 4.

INTERROGATORY NO. 5: Identify the amount of cash reserves held by Citibank in relation to the amount of funds extended, and/or available in credit under the fractional reserve system used by Citibank.

ANSWER TO INTERROGATORY NO. 5: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Citibank's complaint is a collection action for the outstanding obligation due and owing by Carroll pursuant to the terms of her credit card ACCOUNT. Carroll's counterclaim asserts causes of action for alleged violations of the Truth In Lending Act, negligence *per se*, and willful and wanton conduct, all related to Carroll's purported "Billing Error Dispute Letter," which Citibank asserts is not a genuine "billing error" under the law and the impact of Carroll's alleged "signed note(s) or other similar instrument(s)," which Citibank asserts is not relevant because it is undisputed that Carroll made charges on the ACCOUNT, but failed to make required payments on the ACCOUNT. Citibank further objects to this request because it is vague, ambiguous and contains numerous undefined terms such that it is unclear what information is being sought. These terms include "cash reserves" and "fractional reserve system."

ARGUMENT AND REQUEST

Citibank's assertion that this request is not relevant to any claim in this litigation is also disingenuous. The request is relevant to Citibank's claim that Citibank has been damaged, and thus has a cause of action against Carroll. Citibank's assertion that this request is not relevant to any counterclaims is irrelevant, as the request has to do with Citibank's claim. Citibank's assertion that it cannot answer the interrogatory because it is vague, ambiguous and contains numerous undefined terms including "cash reserves," and "fractional reserve system" is specious because the terms are standard financial industry terms. Any claim not to understand these terms by a financial organization is deceptive and evasive. Carroll therefore requests that this court order Citibank to answer Interrogatory No. 5.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 3: Please provide or make available for copying all documents relating to, or referring to, the ACCOUNT in relation to the following entities: Citicorp, Citibank (South Dakota) N.A., and Standard Credit Card Master trust I.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: In addition to its General Objections, Citibank objects to this request, as it is overly broad, vague and ambiguous and contains numerous undefined terms including "Standard Credit Card Master Trust I." Citibank also objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the

discovery of admissible evidence. Subject to and without waiving its objections, Citibank refers Carroll to the documents attached hereto, Exhibit 1 to Plaintiff's Third Set of Admissions, Request for Interrogatories and Request for production of Documents, which consist of the duplicate copies of the available monthly statements for the ACCOUNT, correspondence relating to the ACCOUNT, the ACCOUNT application, and the Card Member Agreement governing the ACCOUNT, attached to Plaintiff's Second Supplemental Response to Defendant's Requests for Discovery and Plaintiff's Second Supplemental Response to Defendant's Request for Admissions, First Set of Interrogatories and Request for Discovery. In addition, Citibank will make available to Carroll non-privileged and available ACCOUNT documents to the extent additional documents are located. Citibank reserves the right to supplement its response to this request.

ARGUMENT AND REQUEST

Carroll's request is not overly broad, as it relates only to documents relating to the ownership, transferring and interest in this specific account. Citibank cannot claim that "Standard Credit Card Master Trust I" is vague, ambiguous or undefined, as this is the name of the trust Citibank created to securitize its credit card assets. Carroll's request is relevant because Citibank placed its credit card accounts into the Standard Credit Card Master Trust I (and more recently Standard Credit Card Master Trust II) as security for certain investment instruments Citibank has issued. Citibank has filled the necessary forms with the Securities and Exchange Commission (SEC) and filed the

required prospectus for each offering which is available to the public through EDGAR, the electronic database of forms and applications filled with the SEC. By placing these credit card accounts into the trust, Citibank has effectively given up ownership and control of the credit card account. As such, Citibank is not a real party in interest in this action and/or has failed to join an essential party (the trust). Citibank therefore lacks standing and its lawsuit against Carroll is either defective or fraudulent. Carroll is entitled to the documents requested to determine the true ownership of the account in question and establish the standing, or lack thereof, of Citibank (South Dakota) N.A. in this action. Carroll therefore requests that this court order Citibank to comply with Request for Production No. 3.

REQUEST FOR PRODUCTION NO. 4: Please provide or make available for copying all documents relating to, or referring to, the ACCOUNT which is, or was used to transfer, sell, change ownership, custody, location, or interest in the ACCOUNT between the following entities: Citicorp, Citibank (South Dakota) N.A., and Standard Credit card Master Trust I.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: In addition to its General Objections, Citibank objects to this request, as it is overly broad, vague, ambiguous and contains numerous undefined terms including "Standard Credit Card Master Trust I." Citibank also objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

ARGUMENT AND REQUEST

This request for production, like the previous request, seeks information regarding the true ownership and interested parties in the ACCOUNT. This request is not overly broad as it relates specifically to the ownership and parties owning an interest in the ACCOUNT. This request is relevant to Citibank's claim against Carroll in that it seeks to determine true ownership of the account in question. Carroll therefore requests that this court order Citibank to comply with Request for Production No. 4.

REQUEST FOR PRODUCTION NO. 5: Please provide or make available for copying all documents relating to, or referring to, the ACCOUNT in which any entity other than Citicorp, Citibank (South Dakota) N.A., and Standard Credit Card Master Trust I are involved.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: In addition to its General Objections, Citibank objects to this request, as it is overly broad, vague, ambiguous and contains numerous undefined terms including "Standard Credit Card Master Trust I." Citibank also objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence.

ARGUMENT AND REQUEST

This request seeks information relating to other entities which may have purchased this account. The request is relevant to Citibank's claim and standing in this court. These issues must be resolved before this litigation can proceed.

Citibank's assertions regarding "Standard Credit Card Master Trust I" are also disingenuous, as this is the trust Citibank created to securitize its credit card assets. By placing this account into the trust, Citibank no longer has ownership or control of this account and is not a real party in interest in this litigation. Carroll therefore requests that this court order Citibank to comply with Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 6 – 12: Please provide or make available for copying all T-balance sheets, ledger sheets and entries, transfers, authorizations, and records and clearly identify (without compromising security) the account(s) from which, and to which, funds were used for the [date] transfer of [amount] to, or from, the ACCOUNT.

REQPONSE TO REQUEST FOR PRODUCTION NO. 6 – 12: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Citibank objects to this request, as it is vague, ambiguous and contains numerous undefined terms including "T-balance sheets," "entries," and "authorizations." Subject to and without waiving its objections, Carroll does not dispute that she requested and received a [amount] balance transfer to her ACCOUNT and, therefore, Citibank refers Carroll to the ACCOUNT Statements. If available, Citibank will also make available the balance transfer check for this balance transfer. Citibank reserves the right to supplement its response to this request.

ARGUMENT AND REQUEST

Request for Production No. 6 through 12 are identical except for the date and amount of the transaction. The request is relevant to Citibank's claim that they have been damaged. Citibank opened the subject of these specific transactions during discovery and has admitted that these transactions may be used as evidence at trial. Carroll has the right to request the supporting documentation to determine the veracity of Citibank's claim against her. Once Citibank opened the subject of these transactions, they can not close the door to discovery of these items and prevent Carroll from examining the basis for the transactions and the supporting documentation. Carroll therefore requests that this court order Citibank to comply with Request for Production No. 6 through 12.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 27: Admit that Citibank is a member of the Federal Reserve System.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. Citibank also objects because the request is overly broad, vague, ambiguous and contains undefined terms including "member."

ARGUMENT AND REQUEST

This request is relevant to Citibank's claim that it has been damaged and thus has a cause of action against Carroll. Carroll has reason to believe that

Citibank has incurred no loss or damage as a result of its membership in, and relationship to the Federal Reserve. Citibank's admission or denial of membership in the Federal Reserve System is at least partly dispositive to the subject of being damaged and having a cause of action in this litigation. Citibank cannot claim that the term "member" in overly broad, vague, ambiguous or is undefined, as this is the term used in the banking industry for membership in, and association with the Federal Reserve. Either Citibank is, or is not, a member of the Federal Reserve. Either Citibank has a business relationship (regardless of terminology) with the Federal Reserve, or it does not. Carroll therefore requests this court order Citibank to admit or deny Request for Admission No. 27.

REQUEST FOR ADMISSION NO. 28: Admit that Citibank uses a fractional reserve system.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: In addition to its General Objections, Citibank objects to this request on the grounds that it is not relevant to any claim or defense in this litigation and it seeks information that is neither admissible nor reasonably calculated to lead to admissible evidence. Citibank further objects to this request because it is vague, ambiguous and contains numerous undefined terms including "fractional reserve system," rendering the request so unclear and confusing that it is not possible to respond.

ARGUMENT AND REQUEST

This request is relevant to Citibank's claim that they have been damaged and thus have a cause of action against Carroll. The use of a fractional reserve system by Citibank has a direct impact on whether Citibank has actually been

damaged or not. Carroll is entitled to have this request either admitted or denied as part of the process of establishing whether Citibank has a real cause of action in the litigation. Citibank's assertion that "fractional reserve system" is vague, ambiguous, undefined and is so unclear and confusing that it is not possible to respond is specious. "Fractional reserve system" is a common term in the banking industry and is instrumental to the process of money creation used by the Federal Reserve and member banks. The fractional reserve system is critical to understanding and proving Citibank's claim of being damaged by Carroll, without which Citibank has no claim against Carroll and is not entitled to any standing in this or any other court. Carroll therefore requests that this court order Citibank to either admit or deny Request for Admission No. 28.

Dated this 8TH day of January, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, David F. Capps, hereby certify that I mailed a true and correct copy of the Defendant's Motion to Compel Discovery to the attorney for the Plaintiff this 8TH day of January, 2007, by Certified Mail # 7005 1160 0002 7630 3579 at the following address:

Sheila R. Schwager
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 82701-1617

David F. Capps

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 3:35 O'CLOCK P .M.
JAN 18 2007
ROSE E. GEHRING
CLERK OF DISTRICT COURT
Kathy Johnson DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff/Counterdefendant,

vs.

MIRIAM G. CARROLL,

Defendant/Counterclaimant,

Case No. **CV-2006-37067**

AFFIDAVIT OF MIRIAM G. CARROLL IN SUPPORT OF HER MOTION TO COMPEL DISCOVERY

STATE OF IDAHO)
) ss:
County of Idaho)

I, Miriam G. Carroll, being duly sworn, and upon oath, do hereby depose and say:

1. That I am the Defendant in the above matter.
2. That I am making this Motion to Compel Discovery because I have no other way of obtaining the evidence I need in my defense except through

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the answering of interrogatories and production of documents by Citibank (South Dakota), N.A.

3. That the information requested is vital to my defense and I would be deprived of a fair hearing without the requested information.
4. That the information requested is relevant to either Citibank's claims against me, my counter claims against Citibank, or jurisdictional issues.
5. That the requested information is material to my defense and I would be prejudiced in this action without the requested information.
6. That Citibank has the information in its possession and has been deceptive and evasive in answering discovery in regard to this information.

Dated this 18th day of January, 2007.

Miriam G. Carroll

Miriam G. Carroll

Subscribed and sworn before me
this 18th day of January, 2007

Sally J. Roy

Notary Public, State of Idaho
Residing in Idaho County

SALLY J. ROY NOTARY PUBLIC STATE OF IDAHO

My Commission expires on:

2/11/11

DOCKETED

IDAHO COUNTY DISTRICT COURT
AT 12:59 FILED O'CLOCK P .M.
FEB 01 2007
ROSE E. GEHRING
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant.	Case No. CV-2006-37067 ORDER TAKING JUDICIAL NOTICE

Upon consideration of Plaintiff, Citibank (South Dakota), N.A.'s, ("Citibank"), Request for Judicial Notice, filed on January 30, 2007, and for good cause shown, this Court hereby ORDERS:

Citibank is a national bank that is supervised by the Office of the Comptroller of Currency, and is therefore exempt from the Idaho Collection Agency Act.

DATED THIS 1 day of February, 2007.

By _____
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of ~~January~~ February, 2007, I caused to be served a true copy of the foregoing ORDER TAKING JUDICIAL NOTICE by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

X U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

X U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

ROSE E. GEHRING, Clerk
Kathy Johnson, Deputy
Clerk of the Court

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant.	Case No. CV-2006-37067 ORDER VACATING TRIAL DATE; CONTINUING SUMMARY JUDGMENT HEARING AND GRANTING LIMITED DISCOVERY

Plaintiff/Counterdefendant, Citibank (South Dakota) N.A. ("Citibank"), by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, having filed a Motion to Continue Trial and a Motion for Summary Judgment under Rule 56 of the Idaho Rules of Civ. Proc.; the Defendant Miriam G. Carroll having filed an Amended Motion to Continue Summary Judgment Hearing pursuant to Rule 56(f) of the Idaho Rules of Civ. Proc.; said motions have been fully briefed and which came regularly for hearing on March 29, 2007, before the Honorable John Bradbury; this court having considered all the pleadings, motions, memoranda, and other documents on file herein, being fully advised in the premises; and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Trial Date is hereby vacated to be set by the Court at a later date;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED the Summary Judgment hearing is continued to be set at a later date by the Court, after limited discovery and further briefing is provided as set forth herein:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Citibank shall provide documentation to the Defendant, setting forth the relationship between Plaintiff and the Master Trust, no later than May 29, 2007;

THAT Citibank shall submit supplemental briefing addressing the Idaho Collection Agencies Act and the relationship between Plaintiff and the Master Trust no later than May 29, 2007;

THAT the Defendant shall submit an opposition brief, if any, to Citibank's supplemental briefing no later than June 29, 2007; and

THAT Citibank shall submit a reply brief no later than July 13, 2007. At that time the Court will take the matter under advisement and set a hearing date for the pending Motion for Summary Judgment.

DATED THIS 5 day of April, 2007.

By _____
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of April, 2007, I caused to be served a true copy of the foregoing ORDER VACATING TRIAL DATE; CONTINUING SUMMARY JUDGMENT HEARING AND GRANTING LIMITED DISCOVERY by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

ROSE E. GEHRING / Clerk

Kathy Johnson, Deputy
Clerk of the Court

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 1:10 O'CLOCK P .M.
JUN 20 2007
ROSE E. GEHRING
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

MOTION FOR SHOW CAUSE HEARING

COMES NOW the Defendant, Miriam G. Carroll, and moves this court to hold a SHOW CAUSE HEARING wherein Citibank (South Dakota) N.A. (hereinafter "Citibank") will be compelled to show why it should not be held in CONTEMPT OF COURT for not providing the information to the Defendant as ordered by this court on the 29th day of March, 2007. This court stated "Ms. Carroll has the right to know who owns this debt." This court ordered Citibank to provide the documentation showing the ownership of this debt regarding the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"). No

documentation regarding the account has been provided. No admission regarding the Master Trust and the ownership of the Receivables has been made. Citibank's answers have been evasive and deceptive and under the Idaho Rules of Civil Procedure are non-responsive.

Citibank has engaged in semantic hair-splitting, claiming that Citibank owns the account but that the Receivables may or may not have been sold or transferred to the Master Trust. The Prospectus Supplement dated December 14, 2006, supplied by Citibank, on page 105 (144 of 183) ¶ 1 & 12, (attached as Exhibit A) states,

> "Eligible receivables are credit card receivables... that constitute an "account" under the Uniform Commercial Code in effect in the State of South Dakota."

The Uniform Commercial Code, incorporated into the South Dakota statutes in Title 57A defines "account" as:

> **§9-102(2)** "account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card.

The Master Trust has a right to receive the payments on the Account as specified in the Pooling and Servicing Agreement, also supplied by Citibank. Therefore, the term "Account" and "Receivables" have a common definition and are thus interchangeable terms. Citibank's contention that the Account and the Receivables associated with the account are two different things is deceptive and evasive. In addition, an account in which the receivables have been sold has been stripped of its receivables, holds nothing, and leaves nothing to collect. The alleged debt resides in the Receivables, not an empty shell account.

The history of ownership of the Receivables is relevant and material to the standing issue. If Citibank sold the Receivables associated with this account to the Master Trust, and acquired the Receivables back after the Receivables were either delinquent of in default, this fact would materially alter Citibank's standing in this court. If Citibank sold the Receivables to the Master Trust, and is simply acting in the capacity of Servicer to collect the Receivables which remain in the possession of the Master Trust, this fact would also materially alter Citibank's standing in this court. This is precisely the documentation this court ordered Citibank to provide. Citibank has not provided any material fact, document or sworn statement concerning the real ownership of the Receivables, as ordered by this court, nor has Citibank provided any history of the ownership of the Receivables. Citibank's refusal to provide the information ordered by this court constitutes contempt of court.

The Defendant therefore moves this court to order Citibank to appear and show cause why it should not be held in contempt of court for not complying with the order of this court.

Dated this 21ST day of June, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, David F. Capps, do hereby certify that I mailed a true and correct copy of the Defendant's MOTION FOR SHOW CAUSE HEARING to the attorney for the Plaintiff by certified mail # 7005 1160 0002 7630 4354 this 21st day of June, 2007 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

Table of Contents

Eligible receivables are credit card receivables

- that have arisen under an eligible account,
- that were created in compliance in all material respects with all requirements of law and pursuant to a credit card agreement that complies in all material respects with all requirements of law,
- with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any governmental authority required to be obtained or given in connection with the creation of that receivable or the execution, delivery, creation and performance by Citibank (South Dakota) or by the original credit card issuer, if not Citibank (South Dakota), of the related credit card agreement have been duly obtained or given and are in full force and effect,
- as to which at the time of their transfer to the master trust, the sellers or the master trust have good and marketable title, free and clear of all liens, encumbrances, charges and security interests,
- that have been the subject of a valid sale and assignment from the sellers to the master trust of all the sellers' right, title and interest in the receivable or the grant of a first priority perfected security interest in the receivable and its proceeds,
- that will at all times be a legal, valid and binding payment obligation of the cardholder enforceable against the cardholder in accordance with its terms, except for bankruptcy-related matters,
- that at the time of their transfer to the master trust, have not been waived or modified except as permitted under the pooling and servicing agreement,
- that are not at the time of their transfer to the master trust subject to any right of rescission, set off, counterclaim or defense, including the defense of usury, other than bankruptcy-related defenses,
- as to which the sellers have satisfied all obligations to be fulfilled at the time it is transferred to the master trust,
- as to which the sellers have done nothing, at the time of its transfer to the master trust, to impair the rights of the master trust or investor certificateholders, and
- that constitutes an "account" under the Uniform Commercial Code in effect in the State of South Dakota.

If the sellers breach any of these representations or warranties and the breach has a material adverse effect on the investor certificateholders' interest, the receivables in the affected account will be reassigned to the sellers if the breach remains uncured after a specified cure period. In general, the seller's interest will be reduced by the amount of the reassigned receivables. However, if there is not sufficient seller's interest to bear the reduction, the sellers obligated to contribute funds equal to the amount of the deficiency.

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff/Counterdefendant,

vs.

MIRIAM G. CARROLL,

Defendant/Counterclaimant,

Case No. **CV-2006-37067**

DEFENDANT'S MEMORANDUM ON THE IDAHO COLLECTION AGENCY ACT

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll") and submits her DEFENDANT'S MEMORANDUM ON THE IDAHO COLLECTION AGENCY ACT as follows:

I

INTRODUCTION

The issue of standing has been raised by Carroll in this case based on publicly available information indicating that Citibank (South Dakota), N.A. (hereinafter "Citibank") has sold the Receivables involved in this action to a third

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party, the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"), and either does not own the Receivables upon which this lawsuit is based, or is acting in the capacity of a debt collector which requires a permit issued by the Director of Finance for the State of Idaho. Carroll has pursued this issue in discovery and has found it necessary to move this court to compel Citibank to comply with her discovery requests. This court stated "Carroll has a right to know who owns this debt." Citibank has not answered the court ordered discovery but has instead provided only an argument as to why the Idaho Collection Agency Act does not apply to Citibank. This refusal to provide court ordered documentation has deprived Carroll of the evidence needed to effectively present her case in this court. Carroll must instead depend on tacit admissions and implied evidence in her present memorandum.

II

CITIBANK OWNERSHIP OF THE ACCOUNT

Citibank states, "CITIBANK is collecting the Account,[2] which it owns, and for its own benefit and, therefore, the ICAA does not apply." The tacit admission which appears in footnote 2, below, indicates that the Receivables involved were in fact in the Citibank Credit Card Master Trust I (hereinafter "the Master Trust") and Citibank acquired the Receivables for collection after the Receivables were both delinquent and in default. Citibank effectively states that what it owns and is collecting are, "Receivables relating to the accounts that have been charged off"

[2] Defendant's Account was charged off prior to CITIBANK suing to collect the Account. Receivables relating to the accounts that have been charged off are not part of the Master Trust. Prospectus, Annex I, p. A1-4. "When accounts are charged off, they are written off as losses in accordance with the credit card guidelines, and the related receivables are removed from the Master Trust." *Id.*

which is something specifically covered by the Idaho Collection Agency Act. Title 26, Chapter 22 of the Idaho Code states,

> **26-2223.** COLLECTION AGENCY, DEBT COUNSELOR PERMITS. No person shall without complying with the terms of this chapter and obtaining a permit from the director:
>
> (9) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

Citibank, in footnote 2, states,

> "When accounts are charged off, they are written off as losses in accordance with the credit card guidelines, and the related receivables are removed from the Master Trust."

The tacit admission is that the debt, which is the subject of this lawsuit, was in the Master Trust and was removed from the Master Trust and acquired by Citibank *after* the debt was charged off, thus being in default when Citibank acquired the debt from the Master Trust. That conduct is consistent with the activities of a collection agent under the Idaho Collection Agency Act.

III

REGULATED LENDER EXEMPTION

Citibank states, "CITIBANK is a national bank chartered under the laws of the United States and located in South Dakota. (citation omitted) CITIBANK, regulated by the Office of the Comptroller of the Currency (the "OCC"), issues credit cards." Citibank claims to be exempt from the Idaho Collection Agency Act based on "regulated lender" status under §26-2239(2), as defined in §28-41-301(37), §28-46-301(2), and §28-41-301(45) as follows:

§26-2239. EXEMPTIONS. The provisions of this chapter shall not apply to the following:

(2) Any regulated lender as defined in section 28-41-301(37), Idaho Code, nor any subsidiary, affiliate or agent of such a regulated lender to the extent that the subsidiary, affiliate or agent collects for the regulated lender;

Section 28-41-301(37) defines:

(37) "Regulated lender" means a person authorized to make, or take assignments of, regulated consumer loans, as a regular business, under section 28-46-301, Idaho Code.

Section 28-46-301(2) also defines:

28-46-301(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

And section 28-41-301(45) defines:

(45) "Supervised financial organization" means a person, except an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of this state or of the United States that authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

The common elements of these definitions are:

- Authorized to make, or take assignments of, regulated consumer loans, as a regular business.
- Making regulated consumer loans,
- Engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account,

- Subject to supervision by an official or agency of this state or of the United States.

And the key element: to the extent that the subsidiary, affiliate or agent collects for the regulated lender. (emphasis added).

While Citibank may perform these activities in other parts of their business, Citibank does none of these things as Servicer for the Master Trust. The Master Trust owns the Receivables and the Master Trust is not a lender, regulated or otherwise. As Servicer, Citibank only performs collection activities as the collection agent for the Master Trust, as relates to the Receivables, and receives a monthly payment for doing so as part of the Pooling and Servicing Agreement (Pg. 37, ¶ 4) as follows:

> Section 3.02. Servicing Compensation. As full compensation for its servicing activities hereunder and as reimbursement for any expense incurred by it in connection therewith, the Servicer shall be entitled to receive the Servicing Fee specified in any Supplement.

Citibank has contracted with the Master Trust to collect payments for Receivables owned by the Master Trust and to pursue collections of Receivables which have been charged off (in default) and is compensated specifically for those activities. Exhibit A is a copy of the Office of the Comptroller of the Currency's handbook titled: Activities Permissible for a National Bank. The attached affidavit provides the necessary information to establish the validity of its source and accuracy of the copy provided. The handbook lists, as a permitted activity, on page 10, ¶ 4,

> *Loan Collection and Repossession Services.* National banks may offer loan collection and repossession services for other banks and thrifts.

> OCC Interpretive Letter (December 14, 1983); OCC Interpretive Letter (March 15, 1971).

And on page 17 ¶ 2,

> *Debt Collection.* National banks may collect delinquent loans on behalf of other lenders, may provide billing services for doctors, hospitals, or other service providers and may act as an agent in the warehousing and servicing of other loans. OCC Interpretive Letter (August 27, 1985).

A national bank may collect loans for other banks, thrifts and lenders. There is no authorization whatsoever for a national bank to collect debts for a non-lender or an entity which is not a bank or a thrift. The Master Trust is not a bank, thrift or lender; it is a holding trust. Citibank, in the capacity of a national bank, does not have authority to collect a debt for the Master Trust, which is not a bank, thrift or lender. Any collection activity for a non-lender is an *ultra vires* activity for a national bank.

Citibank states, "Securitization is a process by which banks, such as the plaintiff in this case, CITIBANK, convert receivables into cash." Converting these receivables into cash is accomplished by selling the receivables. The sale is to the Master Trust with all rights assigned to the Master Trust. Through a process of issuing Certificates from the Master Trust to the Citibank Credit Card Issuance Trust (hereinafter "the Issuance Trust"). The Issuance Trust then sells investment securities based on the Receivables, and uses the funds obtained to pay Citibank for the Receivables. This completes the securitization process of converting the receivables into cash. The receivables have been sold and Citibank has been paid for those Receivables, thus extinguishing all of Citibank's

rights to, and control of, the Receivables. This is why Citibank has contracted separately as Servicer with the Master Trust, not as a national bank or regulated lender, but as a collection agent.

IV

ACTIVITIES OF THE SERVICER

According to the Pooling and Servicing Agreement dated May 29, 1991 As Amended and Restated as of October 5, 2001, provided by Citibank, Citibank is defined as the Servicer as follows:

- Page 18, ¶ 7, "Servicer" shall mean Citibank (South Dakota), in its capacity as Servicer pursuant to this Agreement, and, after any Service Transfer, the Successor Servicer. (emphasis added).

As Servicer, Citibank performs the following activities:

- ARTICLE III – ADMINISTRATION AND SERVICING OF RECEIVABLES
  Section 3.01. Acceptance of appointment and Other Matters Relating to the Servicer.
  (a) Citibank (South Dakota) agrees to act as the Servicer under this Agreement and the Certificateholders by their acceptance of Certificates consent to Citibank (South Dakota) acting as Servicer.
  (b) The Servicer shall service and administer the Receivables, shall collect payments due under the Receivables and shall charge-off as uncollectible Receivables...
- ARTICLE IV Section 4.03 Collections and Allocations.
  (a) The Servicer will apply or will instruct the Trustee to apply all funds on deposit in the Collection Account as described in this Article IV and in each Supplement. Except as otherwise provided below, the Servicer shall deposit Collections into the Collection Account as promptly as possible after the Date of Processing of such Collections, but in no event later that the second Business Day following the Date of Processing.

As Servicer, Citibank sends monthly statements to the cardholders, collects payments from the cardholders, and forwards those payments on to the Master Trust by depositing those payments into a Collection Account. These are not the

permissible activities of a national bank. There is no authorization by the OCC whatsoever permitting a national bank to collect payments and pass those payments on to a non-lender. There is likewise no authorization by the OCC whatsoever permitting a national bank to collect a debt for a non-lender. These are the activities of a collection agent. Citibank, as a regulated lender, has sold the Receivables to the Master Trust and has been paid for those Receivables. That ends Citibank's role and capacity as a regulated lender. Citibank then adopts a new role, acting in the capacity of Servicer, to collect payments and pursue charged-off accounts in court, on Receivables which Citibank no longer owns, for the Master Trust, which is a non-lender. This new role is in the capacity of a debt collector, over which the State of Idaho has statutory control. Acting in the capacity of Servicer for the Master Trust is not a banking activity and is not authorized by the OCC. Citibank has abandoned its status as a regulated lender and has agreed to operate in the capacity of a collection agent for the Master Trust.

V

COLLECTION AGENT ACTIVITIES

The Idaho Collection Agency Act, Title 26, Chapter 22 material section and subsections are as follows:

> **§26-2223.** COLLECTION AGENCY, DEBT COUNSELOR PERMITS. No person shall without first complying with the terms of this chapter and obtaining a permit from the director:
> (1) Operate as a collection agency, collection bureau, collection office, debt counselor, or credit counselor in this state.
> (2) Engage, either directly or indirectly in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(3) ...
(4) Sell or otherwise distribute any system or systems of collection letters and similar printed matter where the name of any person other than the particular creditor to whom the debt is owed appears.
(5) ...
(6) Engage or offer to engage in the business of receiving money from debtors for application to or payment of or prorating of any creditor or creditors of such debtor.
(7) ...
(8) ...
(9) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

Citibank has (1, above), operated in the State of Idaho as the collection agent for the Master Trust without obtaining a permit to do so from the Director of Finance for the State of Idaho. Citibank has (2, above), directly engaged in the State of Idaho in the business of receiving payments for the Master Trust on the account which is the subject of this lawsuit. Citibank has (4, above), distributed a system of collection letters or other similar printed matter (monthly statements) where the name on the statement was Citibank, when in fact the real owner and creditor to whom the debt was owed was the Master Trust. Citibank has (6, above), engaged in the business of receiving money from Carroll in the State of Idaho for application to or payment of the Receivables owned by the Master Trust. Citibank has (9, above), either engaged in the business of collecting indebtedness from Carroll for Citibank's own benefit, acquired from the Master Trust after it was either delinquent or in default as specified in the Pooling and Servicing Agreement in section 2.05 (a) Reassignment of Ineligible Receivables, or Citibank has engaged in collecting a debt it does not own for the Master Trust.

These collection agency activities are regulated by the State of Idaho. In *Goranson v. Brady-McGowan,* 48 Idaho 261, the court held,

> "Compliance with and enforcement of the statute is as effectively accomplished by not allowing an unauthorized party to carry on the collection business or sue in connection therewith as to not allow such person to collect compensation therefore after the services have been rendered."

Citibank is not allowed to engage in these activities in the State of Idaho without the required permit.

The Court of Appeals of Idaho, in *State v. Beard,* 135 Idaho 641 (App.), in reviewing the Idaho Collection Agency Act (26-2223) stated, "It is the *conduct* that the statute proscribes and makes unlawful." (emphasis in original) It does not matter whether Citibank identifies itself as the Servicer, or some other title; it is the *conduct* of Citibank which is at issue, and that conduct is consistent with and clearly defined by the State of Idaho as that of a collection agency.

VI

COMMON OWNERSHIP AND CONTROL

Citibank states, "Idaho Code § 26-2239(10) provides that a person, while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, is not subject to the ICAA." The actual Idaho Code states,

> **§26-2239(10)** A person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, <u>if so related or affiliated and if the principle business of such person is not the collection of debts.</u> (emphasis added).

As clearly shown above, the principle business of the Servicer is the collection of debts, specifically, the Receivables owned by the Master Trust. The exemption does not apply to Citibank because Citibank is in the business of the collection of debts.

Citibank states, "In a nutshell, CITIBANK transfers an interest in credit card receivables to the Master Trust." The Pooling and Servicing Agreement, on page 21, ARTICLE II – CONVEYANCE OF RECEIVABLES, Section 2.01. Conveyance of Receivables states,

> "By execution of this Agreement, each of the Sellers does hereby sell, transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, for the benefit of the Certificateholders, all its right, title and interest in, to and under the Receivables existing at the close of business on the Trust Cut-off Date, in the case of Receivables arising in the Initial Accounts, and on each Additional Cut-off Date, in the case of Receivables arising in the Additional Accounts, and in each case thereafter created from time to time until the termination of the Trust, all monies due or to become due and all amounts received with respect thereto and all proceeds (including "proceeds" as defined in the UCC) thereof. Such property, together with all monies on deposit in the Collection Account, the Series Accounts, any Series Enhancement and the right to receive certain Interchange attributed to cardholder charges for merchandise and services in the Accounts shall constitute the assets of the Trust (the "Trust Assets")."

The fact is; Citibank not only sold the Receivables, but the right to any and all payments on those Receivables, including any Receivables which may be generated in the future. All of the payments collected by Citibank, in its capacity as Servicer, are passed on to the Master Trust, the rightful owner of the Receivables and the associated payments. As Citibank states, "The money generated from the sale of the notes is paid to CITIBANK by the Issuance Trust."

That completes Citibank's role as a national bank or a regulated lender. Citibank (as Seller) has sold, and been paid for the Receivables.

Citibank states, "There are two entities involved in CITIBANK's securitization process, both of which, directly or indirectly, are owned or controlled by CITIBANK." Citibank formed the Master Trust as Grantor, and sold the Receivables to the Master Trust. This does not mean that Citibank "owns" the Trust. The general purpose of a trust is to *sever* ownership and control over the items placed into the trust, along with the associated liabilities. That is why there is a Trustee, who takes over ownership and control of the trust assets. In this case the Trustee (from page 20 of the Pooling and Servicing Agreement) is:

> "Trustee" shall mean Bankers Trust Company in its capacity as trustee on behalf of the Trust, or its successor in interest, or any successor trustee appointed as herein provided."

Likewise, Citibank is the Managing Beneficiary of the Issuance Trust. This does not constitute ownership over the Certificates. The Issuance Trust Trustee (from page 34 of the Pooling and Servicing Agreement) is:

> "The Bank of New York (Delaware) is the issuance trust trustee under the trust agreement. The issuance trust trustee is a Delaware banking corporation and its principal office is located at 502 White Clay Center, Route 273, Newark, Delaware 19711."

To maintain ownership and control over the Receivables after they are sold to the Trust is to violate the very existence, nature and purpose of the Trust. What Citibank has done instead, is enter into a contract with the Master Trust to collect the payments, passing those payments on to the true owner (the Master Trust),

and pursue charged off Receivables in court, the proceeds from which are also passed on to the Master Trust per the Pooling and Servicing Agreement.

> "Section 2.07(d) Delivery of Collections. In the event that such Seller receives Collections or Recoveries, such Seller agrees to pay the Servicer all such Collections and Recoveries as soon as practicable after receipt thereof."

Citibank's protests and posturing aside, Citibank is clearly the collection agent for the Master Trust.

VII

FEDERAL PROTECTION OR PREEMPTION

There is no federal protection or preemption for the activities of the Servicer. The activities of the Servicer regarding the Receivables are strictly collection in nature. The Servicer sends out monthly statements, collects payments, and passes those payments on to the Master Trust. The Servicer receives assignments from the Master Trust after a Receivable has become delinquent or is in default and pursues collection from the debtor. Any amount received as a result of the collection action is also passed on to the Master Trust.

Regulation and supervision of collection agency activity is the purview of the state, not the federal government. In *Dun & Bradstreet, Inc., v. McEldowney,* 564 F.Supp. 257 (1983), two primary issues were examined. The first was the commerce clause of the United States Constitution and its relation to Idaho Code 26-2223 (the Idaho Collection Agency Act). The United States District Court (D. Idaho) held that "(2) regulation of commercial debt collection practices was sufficiently compelling state interest to meet *Pike* balancing test, and

consequently, justified state's policy." The *Pike* balancing test is the general standard for determining whether the laws of a state apply or whether the laws of the federal government apply based on the commerce clause. The balancing test comes from *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174 (1970):

> "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. (citations omitted) If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

The issue in *Dun & Bradstreet* was over the requirement for an in-state *office and an in-state representative*. The U.S. District Court held that the in-state requirement for both office and representative were not unconstitutional and did not violate the commerce clause. While the issue of a license was not directly addressed by the court, the validity of the license requirement was assumed and is the same as the in-state office and in-state representative. Therefore, the State of Idaho's regulation of collection agency activities does not interfere with the commerce clause of the U.S. Constitution, and thus federal law.

The second issue involved the Fair Debt Collection Practices Act [FDCPA] (15 U.S.C.A. 1692 *et seq.*) and commercial debt collection. The court held that the FDCPA applied to consumer debt collection activities rather than commercial debt collection activities. In this case, the activity is consumer debt collection and not commercial debt collection in nature. The court noted:

"The FDCPA, in section 1692n of 15 U.S.C., contains the following provision:

> This title does not annul, alter, or affect, or exempt any person *subject to the provisions of this title from complying with the laws of* any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title."

The Idaho Collection Agency Act, in requiring a license, an in-state office, and a resident agent or in-state representative, over which the State may exercise its authority, provides a higher level of protection for the residents of Idaho than the federal law provides. State control of collection agency activities is clearly not only allowed, but recognized in federal legislation and federal court decisions.

Collection agency activity is clearly established as a non-banking activity and is not covered under the activities of a national bank or a regulated lender. Of the 565 items in the OCC Handbook of Permitted Activities for a National Bank, only two pertain to the collection of debts. Both restrict the activities to collecting a debt for another bank, lender or thrift. The Master Trust is none of those things.

VIII

CONCLUSION

Citibank has tacitly admitted that it has been acting in the capacity of Servicer for the Master Trust. Citibank's entire argument is based on its role as Servicer for the Master Trust. The activities of the Servicer are not allowed by

the OCC for a national bank and are *ultra vires* activities. Citibank terminated its role and capacity as a national bank or regulated lender when it sold the Receivables to the Master Trust. Citibank then adopted a new role as Servicer for the Master Trust, collecting payments and debts which it no longer owned as a collection agent for the Master Trust. Citibank, in its capacity as Servicer, collects payments and passes those payments on to the Master Trust. Citibank, in its capacity as Servicer, pursues collection of debts in court and passes the proceeds from those collections on to the Master Trust. Citibank, in its capacity as Servicer, was required to obtain a permit from the Director of Finance for the State of Idaho before attempting to collect payments or debts for the Master Trust from the residents of Idaho. An examination of the records of permit holders for collection agents in the State of Idaho reveals that Citibank does not have the required permit. Citibank is not permitted by law to maintain this action against Carroll without the required permit.

Dated this 28TH day of June, 2007.

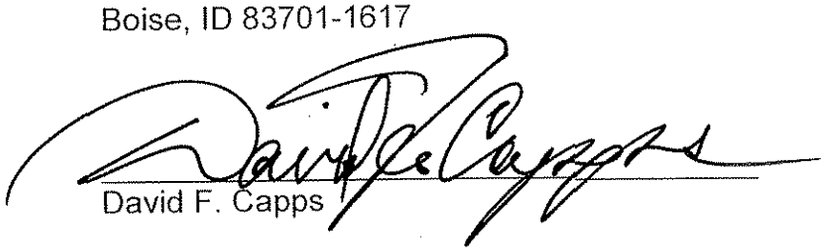
Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of the DEFENDANT'S MEMORANDUM ON THE IDAHO COLLECTION AGENCY ACT to the attorney for the Plaintiff this 28 TH day of June, 2007, by Certified Mail # 7005 1160 0002 7630 4361 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617



David F. Capps

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,
Plaintiff/Counterdefendant,
vs.
MIRIAM G. CARROLL,
Defendant/Counterclaimant.

Case No. CV-2006-37067

ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF REPLY BRIEF

Plaintiff/Counterdefendant, Citibank (South Dakota) N.A. ("CITIBANK"), by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, having filed a Motion for Extension of Time for Submission of Reply Brief; this Court being fully advised and having considered all the pleadings, motions, memoranda, and other documents on file herein; and good cause appearing; therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that CITIBANK's Reply Brief filing deadline set forth in this Court's Order Vacating Trial Date; Continuing Summary Judgment Hearing And Granting Limited Discovery, issued on April 5, 2007, is extended from July 13, 2007 to July 17, 2007. At such time the Court will take the matter under advisement and set a hearing date for the pending Motion for Summary Judgment.

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2007, I caused to be served a true copy of the foregoing ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF REPLY BRIEF by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

ROSE E. GEHRING Clerk

Kelley Johnson, Deputy
Clerk of the Court

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

MOTION TO COMPEL DISCOVERY

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll") and moves this court under Rule 36(a) of the Idaho Rules of Civil Procedure to order the Plaintiff, Citibank (South Dakota) N.A., (hereinafter "Citibank") to answer her discovery requests as follows:

I

INTRODUCTION

Carroll has sent the following discovery requests seeking specific documents relating to Citibank's claim of ownership of the account in question in

this lawsuit. Citibank has responded with bogus objections, deceptive and evasive responses in violation of Rule 33, 34 and 36 of the Idaho Rules of Civil Procedure. Citibank has been unresponsive to requests for voluntary compliance to discovery and has left Carroll with no other option than to involve this court in discovery. The Plaintiff has repeatedly stated that Citibank owns the alleged debt receivables involved in this case, and yet, when Carroll requested any actual documents involved in the transfer of the alleged debt receivables back to Citibank from the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"), Citibank has refused to provide any documents whatsoever demonstrating that Citibank actually owns the alleged debt receivables. This leaves Carroll wondering whether any such documents exist at all. Citibank's standing in this court and its right to bring a claim at all against Carroll depends on Citibank actually owning the alleged debt receivable. Without actual documentation, Citibank cannot proceed.

II

DOCUMENTS

Pursuant to the Pooling and Servicing Agreement, provided by Citibank in support of its role as Servicer, there are nine (9) different documents generated when Receivables are removed from the Master Trust. Carroll has requested each of these nine documents from Citibank in discovery. These documents are relevant and material to Citibank's claim of ownership of the alleged debt receivables. Citibank has refused to supply the requested documents. The requests for the specific documents are as follows:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13: Please provide or make available for copying the Reassignment from the master trust to the Seller, Citibank, in the form of Exhibit C of the Pooling and Servicing Agreement.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 14: Please provide or make available for copying the Acceptance of the Receivables by the Seller pursuant to Citibank's claim that it has reacquired the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 15: Please provide or make available for copying any and all financial records which support, or tend to support, the sale of the Receivables associated with the ACCOUNT to the Seller by the Master Trust as claimed by Citibank.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 16: Please provide or make available for copying (without compromising security) the listing showing the ACCOUNT as a Removed Account, pursuant to Section 2.10(b) of the Pooling and Servicing Agreement.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 17: Please provide or make available for copying any and all Notice of Removal sent or supplied to the Trustee, the Servicer, each Rating Agency, and each Series Enhancer, specifying the Removal Date, pursuant to Section 2.10(a) of the Pooling and Servicing Agreement relating to the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 18: Please provide or make available for copying the Warranty of the Removal Date for the list of

Removed Accounts delivered pursuant to Section 2.10(b) of the Pooling and Servicing Agreement as being true and complete in all material respects, as related to the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 19: Please provide or make available for copying the Certificate delivered to the Trustee and each Series Enhancer by a Vice President or more senior officer, dated the Removal Date, to the effect that such Seller reasonably believes that such removal will not have an Adverse Effect and is not reasonably expected to have an Adverse Effect at any time in the future pursuant to Section 2.10(e) of the Pooling and Servicing Agreement as related to the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 20: Please provide or make available for copying the Tax Opinion, dated the Removal Date with respect to such removal pursuant to Section 2.10(f) of the Pooling and Servicing Agreement as related to the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 21: Please provide or make available for copying the Certificate of a Vice President or more senior officer sent or supplied to the Trustee, dated the Removal Date, pursuant to Section 2.10(g) of the Pooling and Servicing Agreement as related to the Receivables associated with the ACCOUNT.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 22: Please provide or make available for copying Exhibit C from the Pooling and Servicing Agreement.

III

REQUESTS FOR ADMISSIONS

The following Requests for Admission have been made by Carroll in connection with the requested documents. Citibank has again responded with bogus objections. These Requests for Admission have also not been properly answered by Citibank. These requests are relevant and material to the standing of Citibank in this court. The specific requests are as follows:

REQUEST FOR ADMISSION NO. 71: Please admit that Citibank is acting in the capacity of Servicer pursuant to the Pooling and Servicing Agreement in this action.

REQUEST FOR ADMISSION NO. 72: Please admit that Citibank Credit Card Master Trust I has retained an interest in the Finance Charge Receivables associated with the ACCOUNT pursuant to the Pooling and Servicing Agreement.

REQUEST FOR ADMISSION NO. 73: Please admit that the Citibank Credit Card Issuance Trust has retained its interest in the Receivables associated with the ACCOUNT.

REQUEST FOR ADMISSION NO. 74: Please admit that any and all Recoveries collected by Citibank in this action will be paid to the Citibank Credit Card Master Trust I.

IV

CONCLUSION

The requested discovery was made in mid-February, 2007, within the scheduled time for discovery. Citibank has responded with bogus objections and has not responded to the discovery requests as required by the Idaho Rules of Civil Procedure. Carroll therefore moves this court to order Citibank to provide the requested documents and admit or deny the Requests for Admission.

Dated this 8th day of August, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, David F. Capps, do hereby certify, under penalty of perjury, that I mailed a true and correct copy of the Defendant's MOTION TO COMPEL DISCOVERY to the attorney for the Plaintiff this 8TH day of August, 2007 by Certified Mail # 7005 1160 0002 7630 4439 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant,	Case No. **CV-2006-37067** **REBUTTAL TO CITIBANK'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT**

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll") and submits her REBUTTAL TO CITIBANK'S REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT as follows:

I

INTRODUCTION

The issue of standing has been raised by Carroll in this action. Citibank (South Dakota) N.A. (hereinafter "Citibank") has claimed to own the alleged debt receivables involved in this lawsuit. Standing is for the one seeking relief to

prove. Standing cannot be assumed. So far, Citibank is attempting to "prove" it has standing by making a claim of counsel only. So far, Citibank has not provided a single shred of actual evidence showing ownership of the alleged debt receivables. Carroll has provided this court with publicly available information demonstrating that Citibank sold the alleged debt receivables to a third party, transferring all title, rights and ownership to the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"). Citibank's claim of counsel is that the alleged debt receivables were transferred back to Citibank when the account was written off as a bad debt. According to the Pooling and Servicing Agreement between Citibank and the Master Trust, there are at least 8 documents which should have been generated when, and if, the alleged debt receivables were actually removed from the Master Trust and assigned to Citibank. Carroll has requested each of those documents in discovery. Citibank's response was to object on bogus grounds and not provide any of the requested documentation.

Citibank's position seems to be that they want to argue points of law without providing any actual facts to go along with the argument. The judicial process is based on both the facts and the law. Without the facts involved, the determination of what law applies cannot be properly determined. The facts are the foundation upon which the law may be applied. The fact is: Citibank has provided no proof whatsoever that it actually owns the alleged debt receivables upon which this lawsuit is based, even under order of this Court.

II

REBUTTAL OF STATEMENTS MADE BY CITIBANK

In CITIBANK'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT (hereinafter "Reply Brief"), Citibank states (Reply Brief, Pg. 2 ¶ 1), "First, there is no dispute that Citibank is a national bank organized under the laws of the United States." While this isolated statement may be true, it is also true that companies organized as a national bank perform roles as a business other than the permitted activities for a national bank. When they do so, they must comply with the laws, rules and regulations pertinent to those roles. Because a company is a national bank does not give the company carte blanche in any field of business. When a national bank sells insurance, they must comply with the state laws and regulations regarding insurance businesses. When a national bank sells stocks or securities, they must comply with the laws and regulations of the Securities and Exchange Commission and any state laws regarding securities. Status as a national bank is not a single controlling factor; the conduct of the business controls what laws, rules and regulations apply to the business. While a business performs only the permitted activities of a national bank, and has the recognition as a national bank by the Office of the Comptroller of the Currency [OCC], that business is exempt from state laws and state regulations regarding the operation of the bank. But, when a national bank enters conduct outside of the permissible activities, it subjects itself to the laws, rules and regulations pertinent to that field of business.

Citibank states (Reply Brief, Pg. 2, ¶ 1), "As a national bank, Citibank is a "regulated lender" and is therefore exempt from the ICAA." This depends entirely on what specific role Citibank's conduct places it in. When Citibank, just as any

other business, performs the conduct of a collection agency, they come under the state laws, rules and regulations which control collection agencies.

The referenced Affidavit of Idaho Department of Finance Bureau Chief, Mike Larson will be addressed in a supplemental brief, as the Defendant's deposition of Mike Larson is scheduled after this rebuttal is due to be filed.

Citibank states (Reply Brief, Pg. 2, ¶ 1), "The OCC expressly authorizes the securitization of credit card receivables as a permissible activity for a national bank, and Citibank is well within its powers under the National Bank Act when it securitizes its credit card receivables and also acts as the "servicer" for such receivables." Securitizing receivables is defined as (OCC handbook on "Asset Securitization", November 1997, Pg. 2, ¶ 1), "Asset securitization is the structured process whereby interests in loans and other receivables are packaged, underwritten, and sold in the form of "asset-backed" securities." Citibank also describes the securitization process as "converting the receivable into cash." The OCC specifically authorizes a national bank to securitize its credit card receivables (converting them into cash) by two different methods: A national bank can sell the receivable, thus converting it into cash. Or, a national bank can bundle the receivables and use the receivables as collateral against which the national bank borrows money from the commercial market, thus converting the receivables into cash. Either one of these activities are permitted activities for a national bank. Citibank sold the receivables to the Master Trust as stated in the Prospectus (Pg.101 – Master Trust Assets – "The master trust assets consist primarily of credit card receivables arising in a portfolio of

revolving credit card accounts, and collections on the accounts. Citibank (South Dakota) – and Citibank (Nevada) prior to its merger into Citibank (South Dakota) – sells and assigns the credit card receivables to the master trust.) and in the Pooling and Servicing Agreement (Article II, Section 2.01 Conveyance of Receivables – "each of the Sellers does hereby sell, transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, for the benefit of the Certificateholders, all its right, title and interest in, to and under the receivables"). (Emphasis added). That is how Citibank securitized its credit card receivables; it sold them.

Citibank added the statement, "and also acts as the "servicer" for such receivables." There is actually no authorization whatsoever on the part of the OCC permitting a national bank to act as "servicer" for receivables which it sold. Significantly, in the "Asset Securitization" Comptroller's handbook, supplied by Citibank, regarding securitization and collections in Section 49, Collections (Pg. 82, ¶ 10) is subsection c, "Evaluate methods used by management to ensure that collection procedures comply with applicable state and federal laws and regulations." If, as Citibank states, the OCC has exclusive authority and state laws do not apply; why would the Examiner in Charge need to evaluate how the bank complied with state laws and regulations as well as federal laws and regulations regarding collections? The only reasonable explanation is that the OCC recognizes that in the bank's roles (other than the specific permitted activities of a national bank), the bank is actually subject to state laws in these other roles. Why else would a bank examiner need to evaluate the methods

used by management to insure that collection procedures comply with state and federal laws and regulations?

Citibank states (Reply Brief, Pg. 2 ¶ 2), "Second, Defendant cannot credibly dispute that Citibank is collecting on the Account, which it owns, for its own benefit." Actually, the Defendant can. The Prospectus Supplement dated December 14, 2006, supplied by Citibank, on page 105 (144 of 183) ¶ 1 & 12, states,

> "Eligible receivables are credit card receivables... that constitute an "account" under the Uniform Commercial Code in effect in the State of South Dakota."

The Uniform Commercial Code, incorporated into the South Dakota statutes in Title 57A defines "account" as:

> **§9-102(2)** "account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card.

As Citibank's own definition states, "account" means a right to payment of a monetary obligation. The Pooling and Servicing Agreement, dated as of May 29, 1991, as Amended and restated as of October 5, 2001, states (Article II, Section 2.01, Pg. 21, ¶ 5),

> **Section 2.01.** Conveyance of receivables. By execution of this Agreement, each of the Sellers does hereby sell, transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, for the benefit of the Certificateholders, all its right, title and interest in, to and under the Receivables existing at the close of business in the Trust Cut-off Date, in the case of Receivables arising in the Initial Accounts, and on each Additional Cut-off Date, in the case of Receivables arising in the Additional Accounts, and in each case thereafter created from time to time until the termination of the Trust, all monies due or to become due and all amounts received with respect thereto and all proceeds (including "proceeds" as defined in the UCC) thereof. Such property, together with all monies on

> deposit in the Collection Account, the Series Accounts, any Series Enhancement and the right to receive certain Interchange attributed to cardholder charges for merchandise and services in the Accounts shall constitute the assets of the Trust (the "Trust Assets").

Not only did Citibank sell the Receivables to the Master Trust, transferring all its right, title and interest in the receivables to the Master Trust, Citibank also sold and transferred "all monies due or to become due and all amounts received with respect thereto and all proceeds thereof" as well as "the right to receive certain Interchange attributed to cardholder charges for merchandise and services in the Accounts". All of these belong to the Master Trust and have become the "Trust Assets." Thus, the right to payment of the monetary obligation was sold and transferred to the Master Trust. By Citibank's own definition, the Account was sold to the Master Trust. Citibank cannot credibly claim it has always owned something it clearly sold, transferring all title, rights and ownership to the Master Trust.

Citibank states (Reply Brief, Pg. 2, ¶ 2), "Defendant's arguments regarding the Master Trust and the ownership of the credit card receivables in the Master Trust have nothing to do with the collection of this Account by Citibank." Actually, ownership has everything to do with Citibank collecting this account. Citibank has not produced even a single shred of evidence proving that it actually owns the alleged debt receivables as claimed in this lawsuit. Without that proof of ownership, Citibank does not have standing in this court, nor can Citibank prove the essential element of ownership in its claim against the Defendant.

Citibank states (Reply Brief, Pg. 2, ¶ 2), "The fact that the receivables relating to the Account may have been removed from the Master Trust when the

Account was charged-off does not change the fact that Defendant's debt, and the corresponding obligation to repay such debt, is owed to Citibank, and not to the Master Trust, trustee or third-party investors." (Emphasis added). The problem with this statement is that the receivables *may not* have been removed from the Master Trust. Stating that "the fact that the receivables relating to the Account may have been removed from the Master Trust" is not a fact at all, but rather speculation. Citibank needs to prove ownership of the debt receivables. Having the alleged debt receivables removed from the Master Trust is an essential part of that process. Shouldn't Citibank be stating that the alleged debt receivables have been removed? The fact that Citibank is stating that the alleged debt receivables may have been removed from the Master Trust is prima facia evidence that the receivables are still in the Master Trust and Citibank has neither ownership nor assignment of the alleged debt receivables. So far Citibank has provided no evidence whatsoever that the receivables in question have actually been removed from the Master Trust. From all available evidence, the receivables involved are still owned by the Master Trust, not Citibank. This fact makes a profound difference in who has standing in this court.

Citibank states (Reply Brief, Pg. 2, ¶ 3), "Third, even if the court were to accept Defendant's skewed and inaccurate analysis that Citibank is collecting on behalf of the Master Trust, Citibank has amply demonstrated that both the Issuance Trust and Master Trust are under common ownership and control with Citibank such that Citibank, as well as the trusts, are exempt from the ICAA pursuant to I.C. § 26-2239(10)." While Citibank may, or may not, be exempt from

the Idaho Collection Agency Act [ICAA], there is no exemption for either the Master Trust or the Issuance Trust. These entities are holding trusts, not lenders, regulated or otherwise. These entities do not engage in any of the activities associated with "regulated lenders", are not listed as subsidiaries of a national bank with the OCC and cannot qualify for an exemption under the ICAA. The common ownership rule in the ICAA applies only if the business of the party is *not* the collection of debts. Citibank, in its role and capacity as servicer, is clearly in the business of debt collection, so the exemption does not apply.

Citibank states (Reply Brief, Pg. 3, ¶ 2), "The fact that Citibank uses its assets (i.e., its credit card receivables) as an investment vehicle does not alter Defendant's agreement to honor her debt to Citibank." Actually, it does. When Citibank sold the alleged debt receivables to the Master Trust, assigning all title, rights and interest in those receivables to the Master Trust, plus all future receivables and future payments to the Master Trust, the alleged debt obligation was also transferred to the Master Trust. Any and all alleged debt obligations to Citibank were extinguished with the sale of the receivables to the Master Trust. To date, Citibank has provided absolutely no evidence proving that Citibank has acquired any ownership or actual assignment of the alleged debt receivables. Citibank claims that it is only using its assets (i.e., its credit card receivables) as an investment vehicle. This is not true. When Citibank sold the alleged debt receivables to the Master Trust the receivables ceased to be Citibank's assets. Stating that Citibank was using its assets (credit card receivables which were actually sold) as an investment vehicle is a misrepresentation of a material fact.

Citibank states (Reply Brief, Pg. 3, ¶ 4), "Importantly, the Idaho Supreme Court previously has relied upon the interpretation of the ICAA by the Idaho Department of Finance in determining the appropriate scope of the ICAA. See Davis v. Professional Bus. Servs., Inc., 109 Idaho 810, 712 P.2d 511, 517 (1985) (relying on amicus brief of the Idaho Department of Finance). This court should grant the same deference here." In *Davis*, the defendant was a bookkeeping company, providing bookkeeping and accounting services for a medical company. The Idaho Supreme Court decided that the bookkeeping service did not qualify as a collection agency for the following reasons: (1) defendant never sent any mailings or billings in its own name, but rather in plaintiff's name; (2) plaintiff never assigned any of its accounts to defendant; (3) defendant deposited all the money it received for plaintiff into plaintiff's own bank accounts; (4) plaintiff paid defendant directly from plaintiff's accounts upon signature of one of the plaintiff's personnel; and (5) when plaintiff's accounts were not paid in the regular billing process, defendant turned them over to a collection agency for collection.

If Citibank sent out statements in the name of the Master Trust, had customer checks made out to the Master Trust, deposited those checks into an account in the name of the Master Trust, and when the account was in default had turned the account over to a collection agency, then Citibank would be entitled to the same deference. However, Citibank did not do that. Citibank sent out statements in the name of Citibank, when Citibank knew the associated receivables had been sold and they no longer had a right to payment. Citibank had the customer make the check out to Citibank, and Citibank deposited the

check into an account in the name of Citibank, all the while knowing that Citibank no longer had a right to the payment. Citibank also took it upon itself to collect the alleged debt receivable rather than turn it over to a collection agency. Citibank is not entitled to the same deference.

The Idaho Department of Finance also provided an amicus brief where it explained its view that "the Act in question was designed to (1) protect the creditor whose money is collected by an assignee-collector who, absent the Act's protection, might not deliver the collected proceeds to the creditor; and (2) protect the public from unscrupulous collectors." While we have no evidence that Citibank may, or may not, have paid the money it collected to the Master Trust, we do have evidence that Citibank acted unscrupulously in regards to the public in collecting payments on a debt it did not own and attempting to sue a consumer for an alleged debt for which Citibank has produced no evidence whatsoever that it actually owns, or for which it has received an assignment.

Citibank states, (Reply Brief, Pg. 4, ¶ 1), "The National Bank Act grants Citibank the powers of, among other things, "receiving deposits" and "loaning money" (See 12 U.S.C. § 24 (Seventh))" The implication is that when Citibank receives and passes on payments to the Master Trust it is "just" receiving deposits. But the deposits in the National Bank Act are customer deposits to checking or savings accounts which the bank owns. This is significantly different from the collection agency activities of the Servicer for the Master Trust. In this regard, Citibank did not technically "loan money" but extended credit, which is not authorized by 12 U.S.C. § 24 (Seventh).

Citibank states (Reply Brief, Pg. 4, ¶ 1), "Indeed, Defendant concedes that the OCC has exclusive regulatory authority here because, in support of her Opposition, she submits a section of the OCC-published Comptroller's Handbook entitled [sic] *Activities Permissible for a National Bank*." How Citibank comes to that conclusion is unexplained. Carroll has made no such concession or admission. Carroll submitted the handbook as a demonstration that Citibank was operating *outside* the permitted activities for a national bank. This does not, in any way, constitute recognition that the OCC has *exclusive* regulatory authority here. Carroll has clearly demonstrated that Citibank is operating in the role and capacity of a debt collection agency, and as such, is required to have a permit for such conduct in the State of Idaho.

Citibank states (Reply Brief, Pg. 4, ¶ 2), "the OCC specifically authorizes the securitization of credit card receivables as a permissible activity for national banks. In fact, the same OCC handbook relied upon by Defendant specifically states: 'National banks may securitize and sell assets they hold, including mortgage and nonmortgage loans that are originated by the bank or purchased from others.'" Citibank sold the receivables as authorized and permitted by the OCC. That ended Citibank's authorized and permitted activities regarding the receivables. There is no specific OCC authorization for Citibank to act as "servicer" for receivables which it has sold and no longer owns. Acting as servicer is not a permitted activity for a national bank.

Citibank states (Reply Brief, Pg. 5, ¶ 1), "The National Bank Act confers broad powers upon national banks, including 'all such incidental powers as shall

be necessary to carry on the business of banking,' and further including, without limitation, the powers of 'discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt.' 12 U.S.C. § 24 (Seventh)." This is true. Citibank negotiated and sold the alleged evidences of debt, just as they were authorized by the OCC and the National Bank Act. There is no dispute over that simple fact. What is in dispute is whether Citibank is authorized, as a national bank, to collect payments and pass them on to a non-lender and to represent a non-lender in court without the required permit. Currently, there is no authorization for Citibank to do so. It is not a permitted activity for a national bank. As a national bank, Citibank can perform only those permitted activities which are specifically enumerated by the OCC. Acting as "servicer" is not currently listed as a permitted activity by the OCC for a national bank.

Citibank states (Reply Brief, Pg. 5, ¶ 1), "It is undisputed that the OCC is tasked with the exclusive authority to regulate the national banking system. See 12 U.S.C. § 93a; Watters v. Wachovia Bank, N.A., 127 S. Ct. 1559, 1564 (2007) ("As the agency charged by Congress with supervision of the NBA, OCC oversees the operations of national banks and their interactions with customers.")." While it may be true that the OCC is tasked with the exclusive authority to regulate the national banking system as a whole, it is also true that national banks individually, are equally subject to state laws and state regulation. Federal preemption of state laws is not a function of the OCC, but of Congress. In *Watters*, the U.S. Supreme Court also stated,

> "Federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter

> or the general purposes of the NBA. *Davis v. Elmira Savings Bank*, 161 U.S. 276, 290 (1896). See also *Atherton,* 519 U.S., at 223. For example, state usury laws govern the maximum rate of interest national banks can charge on loans, 12 U.S.C. §85, contracts made by national banks 'are governed and construed by State laws,' *National Bank v. Commonwealth,* 9 Wall. 353, 362 (1870), and national banks' 'acquisition and transfer of property [are] based on State law,' *ibid.* However, 'the States can exercise no control over [national banks], nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is an abuse, because it is the usurpation of power which a single State cannot give.' *Farmers' and Mechanics' Nat. Bank v. Dearing*, 91 U.S. 29, 34 (1875) (internal quotation marks omitted)."

There is no authorization in the National Bank Act [NBA] for a national bank to collect the debts of a non-lender. As such, there is no federal preemption of state laws regarding the collection of debts for non-lenders. Significantly, in the *Watters* dissenting opinion of Justice Stevens, with whom The Chief Justice and Justice Scalia join, regarding national banks, states,

> "They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and constructed by State laws. Their acquisition and transfer of property, <u>their right to collect their debts</u>, and their liability to be sued for debts, are all based on State law." (Emphasis added).

The same dissenting opinion also states,

> "For the same reasons, we observed in *First Nat. Bank in Plant City v. Dickinson*, 396 U.S. 122, 133 (1969), that '[t]he policy of competitive equality is ... firmly embedded in the statutes governing the national banking system.' So firmly embedded, in fact, that 'the congressional policy of competitive equality with its deference to state standards' is not 'open to modification by the Comptroller of the Currency.'"

The majority opinion states,

> "States are permitted to regulate the activities of national banks where doing so does not prevent or significantly interfere with the national bank's or the national bank regulator's exercise of its powers."

Collecting debts for a non-lender is not within the powers enumerated for a national bank. Therefore the State is clearly permitted to regulate the national bank in this collection action.

In the Gramm-Leach-Bliley Act [GBLA] of 1999, Congress revised a portion of the national banking laws, separating out financial institutions from national banks. This act pulled back some of the authority and activities of the OCC and re-defined a number of financial activities. The GLBA defines financial institution as,

> "*Definition*: Any institution in the business of which is engaging in *financial activities* as described in *section 4(k) of the Bank Holding Company Act* (12 U.S.C. § 1843(k)). Under the Final Rule promulgated by the Federal Trade Commission (FTC), an institution must be *significantly engaged* in financial activities to be considered a 'financial institution.'"

These financial activities are closely related to banking but are now considered to be non-banking activities. These activities include:

III - A. Financial Activities:

- Engaging in an activity that the Federal Reserve Board has determined to be closely related to banking. [§ 4(k)(4)(F); 12 C.F.R. § 225.28]. For example:
  - Extending credit and servicing loans
  - Collection agency services
  - Real estate and personal property appraising
  - Check guaranty services
  - Credit bureau services
  - Real estate settlement services
  - Leasing real or personal property (on a nonoperating basis for an initial lease term of at least 90 days)
    (Emphasis added).

III – B. Examples of businesses that engage in "financial activities" and are "financial institutions" for purposes of the GLB Act:

- Mortgage lender or broker
- Check casher
- Pay-day lender

- Credit counseling service and other advisors
- Medical-services provider that establishes for a significant number of its patients long-term payment plans that involve interest charges
- Financial or investment advisory services including tax planning, tax preparation, and instruction on individual financial management
- Retailer that issues its own credit card
- Auto dealers that lease and/or finance
- Collection agency services
- Relocation service that assists individuals with financing for moving expenses and/or mortgages
- Sale of money orders, savings bonds, or traveler's checks
- Government entities that provide financial products such as student loans or mortgages
(Emphasis added).

While the list seems long and involved, it is addressing the evolving financial market and the companies which are involved. Of particular interest here are the following activities: Extending credit and servicing loans, and Collection agency services, in III A above. The OCC handbook "Asset Securitization" points out in the "Background" section,

> "But securitization markets offer challenges as well as opportunity. Indeed, the success of nonbank securitizers are forcing banks to adopt some of their practices. Competition from commercial paper underwriters and captive finance companies has taken a toll on bank's market share and profitability in the prime credit and consumer loan business. And the growing competition within the banking industry from specialized firms that rely on securitization puts pressure on more traditional banks to use securitization to streamline as much of their credit and originations business as possible." (Emphasis added).

The point is: banks have had to move into and adopt non-banking practices to compete with the other companies now identified as "financial institutions". As banks have done so, they have subjected themselves to the laws and regulations under which these other financial institutions operate. Just as banks are subject to state laws in the insurance and securities business, so too are banks subject to state laws in servicing loans which they have sold and collection agency

activities for the Master Trusts which they serve. As the GLBA states in Section IX(C),Relationship to State Laws:

> State laws are not preempted except to the extent that they are "inconsistent" with this federal law. A state law is not "inconsistent" if it affords "greater protection" to consumers than provided for by this federal law, as determined by the FTC.

Idaho, in requiring registration and permits for collection agency activities, affords greater protection for consumers than the associated federal law provides. Thus the Idaho Collection Agency Act is not preempted by federal law.

In *Watters* (supra), the U.S. Supreme Court stated,

> "[T]he States can exercise no control over [national banks], nor in any wise affect their operation, except in so far as Congress may see proper to permit." (Emphasis added).

That control for states was granted in the GLBA when a bank engages in the activities of a "financial institution", which include servicing loans and collection agency activities – the specific activities of Citibank in its role and capacity as "servicer" for the Master Trust.

Citibank cites *Barnett Bank, N.A. v. Nelson*, 517 U.S. 25, 33 (1996). In *Barnett*, the issue was over the bank selling insurance in Florida. Selling insurance is an authorized and permitted activity for a national bank. The State cannot prevent the bank from selling insurance. However, as *Barnett* makes clear, the State retains the power to regulate and tax the bank's insurance business. The insurance business of the bank is not relevant to this case, but the State's regulation of the bank certainly is relevant.

Citibank cites *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299. 314-15 (1978). The issue in *Marquette* was over the rate of interest

charged on credit card accounts. This is an authorized and permitted activity of a national bank, which is also not relevant to the servicer role of Citibank in this case.

Citibank states (Reply Brief, Pg. 6, ¶ 1), "The OCC also is the appropriate regulator with respect to the debt collection programs and activities of national banks. See OCC Interpretive Letter, 1985 WL 151323, at ¶ 4 (Aug. 27, 1985) ("[I]t is both usual and necessary for banks to undertake collection activities with respect to their own delinquent loans.")." This statement is true. Citibank would be well within its rights and powers if it were to undertake collection activities with respect to their own delinquent loans. But Citibank is not doing that. Citibank is attempting to collect an alleged loan which it sold, and consequently no longer owns. This is the activity and conduct of a collection agency, over which the State of Idaho has authority and control. Citibank has provided no evidence whatsoever proving that it either owns the alleged debt receivables, or that it has actually received an assignment of the alleged debt receivables. Without that proof, Citibank has no standing in this court.

The OCC Interpretive Letter dated August 27, 1985, Banking Research Digest Section 720A, File 16, in regards to 12 U.S.C. 24(7) states,

> "This is in response to your request for a legal opinion confirming that your client, a national bank, may provide two services pursuant to the incidental powers clause of 12 U.S.C. § 24(Seventh). Under the first service, the bank would collect delinquent loans on behalf of other lenders. [FN1] The second service would consist of billing persons for fees owed to doctors, hospitals, and other service providers. As discussed below, it is my opinion that both of these services proposed here are permissible banking activities."

As pointed out before, the Master Trust is not a lender, regulated or otherwise. The Master Trust is also not a doctor, hospital or other service provider. This Interpretive Letter is therefore not relevant to this case.

Citibank refers (Reply Brief, Pg. 6, ¶ 1) to "Burgos v. Citibank N.A., 432 F.3d 46, 49 (1ST Cir. 2005) (collection activity engaged in by a national bank "is simply 'part and parcel' of a customary banking activity")." In this case, the collection activity was on a loan which Citibank actually owned. What is remarkable about this case is Citibank's actual "collection activity". Nancy Burgos entered into a loan with Citibank for a car. When the loan became delinquent, Citibank turned it over to a collection agency. The collection agency renegotiated the terms and entered into a revised contract, accepting a large down payment and monthly payments from Nancy Burgos. While Nancy Burgos was making the new monthly payments, Citibank reported the car as "stolen" to the local police. Nancy Burgos car was confiscated and she was arrested when she appeared at the police station. After investigating, the police released Nancy Burgos and the DA had Nancy's car returned to her. Citibank's "collection activity" comprised breaching the revised contract, and falsely reporting the car as "stolen" to the police. This is precisely the kind of unscrupulous collection activity the Idaho Collection Agency Act is designed to regulate.

Citibank states (Reply Brief, Pg. 6, ¶ 2), "Importantly, the OCC has determined that the powers conferred under the National Bank Act include the "broad authority to buy and sell loan assets" and "broad authority to borrow money and to pledge their assets as collateral for such borrowings" (OCC

Interpretive Letter No. 540, 1991 WL 570780, at * 2 (June 1001) (citations omitted))." Citibank sold the alleged debt receivables as authorized. Citibank did not retain the receivables, using them as collateral for borrowing.

Citibank continues, "and '[e]stablishing credit card accounts and generating accounts receivable evidencing extensions of credit.' OCC Corporate Decision No. 98-39, 1998 WL 667884, at *4 (Mar. 27, 1998) (approving securitization of credit card receivables by permitting national banks to sell credit card receivables and use them as collateral for an investment security:" (Emphasis added). The pertinent sections of the quote follow:

> "Accordingly, the bank is authorized to sell its credit card receivables through the use of the subsidiary. In addition, because national banks are authorized to borrow money and to pledge their assets as collateral therefore, the subsidiary is authorized to borrow funds in the market using the credit card receivables as collateral."
>
> "The use of securitization to accomplish the sale of the receivables or as a vehicle for borrowing against them is a permissible means by which a national bank may carry out these activities." (Emphasis added).

The subsidiary mentioned is Georgia Bank, N.A., a recognized national bank, listed by the OCC as such, now a subsidiary of Citicorp. This is significantly different from the Master Trust and the Issuance trust, which are not "regulated lenders", nor are they "subsidiaries" of Citibank, nor are they listed by the OCC as national banks, subsidiaries, affiliates, or regulated lenders.

Citibank has two permitted and authorized options in its securitization: it can sell the credit card receivables ***or*** it can retain the receivables and use them as collateral for borrowing. Citibank chose to sell the receivables. Citibank

cannot now claim that it was just using the same receivables as collateral. That is a misrepresentation of a material fact.

Citibank refers to OCC Interpretive Letter No. 540 (December 12, 1990 – June 1991). Citibank's implication is that the OCC has authorized a national bank as "servicer" in a securitization program. An examination of the Letter reveals that in the Discussion section of the Letter, individual authorizations are provided for each phase of the proposed securitization program, with the obvious exception of the bank's role as "servicer". No authorization is provided for the role as "servicer". The pertinent parts of the Letter are as follows:

> "While the OCC has not previously addressed the legal authority for a national bank to sell **or** borrow against its credit card receivables through the use of securitization, it is clear that this activity is permitted for national banks." (Emphasis added)."
>
> "Credit card receivables are loan assets evidencing loans made on personal security. See 12 U.S.C. § 24 (Seventh) and 12 C.F.R. § 7.7378. National banks may purchase and sell these loan assets pursuant to their authority to discount and negotiate evidences of debt."
>
> "Similarly, as the OCC stated in Interpretive Letter No. 416, the negotiation of loans made on personal security is also part of the business of banking. Accordingly, the bank is authorized to sell its credit card receivables through the use of the subsidiary."
>
> "The use of securitization to accomplish the sale of the receivables **or** as a vehicle for borrowing against them is a permissible means by which a national bank may carry out these activities." (Emphasis added).

The bank was authorized to use a subsidiary (officially recognized and listed by the OCC as a national bank or authorized subsidiary) to sell its credit card receivables, **or** to retain the receivables and use them as collateral for borrowing. No authorization was provided for the bank to act as "servicer".

Citibank states (Reply Brief, Pg. 7, ¶ 2), "Importantly, the OCC acknowledges that the activities of a "servicer" in the asset securitization process (Citibank, here) include "customer service and payment processing for the borrowers in the securitized pool and collection actions in accordance with the pooling and servicing agreement. Servicing can also include default management and collateral liquidation." Appendix, Exh. A (Asset Securitization) at 10." Acknowledgement is not authorization. Authorization implies that the activity is permitted for a national bank. Acknowledgment implies that the OCC recognizes that the GLBA covers the activity of a financial institution, over which the States have regulatory control.

Citibank states (Reply Brief, Pg. 7, ¶ 2), "Not only do these materials demonstrate that the OCC has a system in place by which it regularly reviews and examines the asset securitization activities of national banks, but the original issuer of the credit card receivables subject to securitization retains the power to collect the underlying debt as part of the "servicer" role." The actual quote comes from page 10 in the "Asset Securitization" handbook, as follows:

> "*Servicer.* The originator/lender of a pool of securitized assets usually continues to service the securitized portfolio. (The only assets with an active secondary market for servicing contracts are mortgages.) Servicing includes customer service and payment processing for the borrowers in the securitized pool and collection actions in accordance with the pooling and servicing agreement. Servicing can also include default management and collateral liquidation. The servicer is typically compensated with a fixed normal servicing fee."

The OCC's concern is not one of regulation, since the activity is one of a financial institution as defined in the GLBA, not a national bank, but one of evaluating the risk control in place so the national bank does not fold as a result of these

financial activities. As the OCC states on page 1 of the Asset Securitization handbook,

> "The discussion of risk focuses on bank's roles as financial intermediaries, that is, as loan originators and servicers rather than as investors in asset-backed securities."

This is consistent with the financial activities of financial institutions as described in the GLBA, over which states have regulatory control.

Citibank states (Reply Brief, Pg. 8, ¶ 1),

> "As noted above, Defendant contends – without citing any supporting authority – that Citibank is not a 'regulated lender' exempt under the ICAA because Citibank's collection of the receivables in the Master Trust 'are not allowed by the OCC for a national bank and are *ultra vires* activities.' (Opp. At 15-16) According to Defendant, 'Citibank terminated its role and capacity as a national bank or regulated lender when it sold the receivables to the Master Trust.' (Id. At 16.) Moreover, Defendant contends that, by selling its credit card receivables to the Master Trust, Citibank ceases to be a national bank and, instead, 'adopts a new role, acting in the capacity of Servicer' and '[a]cting in the capacity of Servicer for the Master Trust is not a banking activity and is not authorized by the OCC.' (Id. At 8.) As the authorities cited above confirm, Defendant's analysis is completely incorrect."

The combination of the above cited authorities and the GLBA do in fact define the role of servicer as that of a financial institution under the GLBA, subjecting the servicer to the authority of state regulation. When Citibank sold the credit card receivables it did so as a national bank, with full authority and recognition as a national bank. When Citibank entered into a new contract and relationship with the Master Trust, it did so as a financial institution under the authority and recognition of the GLBA, and under the authority and regulation of the individual States. MAIN ARG.

Citibank states (Reply Brief, Pg. 8 ¶ 2), "The OCC has expressly approved of the securitization of credit card receivables as 'part of the business of banking' and a 'permissible activity for a national bank.' OCC Interpretive Letter No. 585, 1992 WL 598402 at * 2 (June 8, 1992) (recognizing OCC's approval of asset securitization by national banks as a means of selling or borrowing against credit card receivables). In fact, the OCC specifically has approved the securitization of credit card receivables by Citibank, N.A. See OCC Corporate Decision No. 98-39, 1998 WL 667884, at * 4 (Mar. 27, 1998)." This is true. Citibank sold the *credit card receivables as authorized and permitted* by the OCC as part of the business of banking. Citibank did not retain the receivables and use them as collateral for borrowing.

Citibank states (Reply brief, Pg. 8, ¶ 2), "Moreover, the Comptroller's Handbook confirms that the powers of a "servicer" include the ability to collect the securitized receivables. Thus, Defendant cannot credibly argue that Citibank is not authorized by the OCC to act as a "servicer" or that Citibank ceases to be a national bank by transferring its credit card receivables to the Master Trust." Actually, the Comptroller's handbook makes no mention of authorizing the role of "servicer" for a national bank. There is only an acknowledgement that the bank is competing with other financial institutions by becoming the "servicer" to the Master Trust. This financial activity is clearly defined under the GLBA, firmly placing the activity and conduct of the "servicer" under the authority and regulatory control of the States.

Citibank states (Reply Brief, Pg. 8 ¶ 3), "Nor can Defendant rely upon state law and this Court to seek a ruling preventing Citibank from exercising its powers as a national bank. Again, the OCC, the agency charged by Congress with overseeing federally-chartered national banks, has exclusive enforcement power against national banks, including with respect to alleged violations of state law." This is not true. First, acting as servicer for the Master Trust is not a power of a national bank, it is a financial activity of a financial institution as described in the GLBA, and as such, is regulated by state law, over which this court has jurisdiction and authority. Second, the OCC does not have exclusive enforcement power against national banks, including with respect to alleged violations of state law. The case reporter system is full of state cases against national banks which have violated state laws.

Citibank states (Reply Brief, Pg. 8, ¶ 4 – continued on Pg. 9), "Here. The OCC has specifically addressed, and issued rulings regarding, the conduct at issue. Accordingly, this Court must defer to the OCC in this regard particularly because state litigation is preempted to the extent that it is used to prevent or interfere with a national bank's exercise of its powers. See Nelson, 517 U.S. at 33; Marquette Nat'l Bank, 439 U.S. at 314-15." This is not true. The OCC rulings issued allow a national bank to sell their credit card receivables, or retain the credit card receivables and use them as collateral for borrowing. Citibank sold the credit card receivables. The conduct at issue here is the activity of Citibank in its role of "servicer", which is not authorized by the OCC for a national bank, but which is clearly defined and described by the GLBA as a financial activity for

a financial institution which is regulated by state law. Acting as "servicer" for the Master Trust is not one of the enumerated powers of a national bank. As such, there is no federal preemption.

Citibank states (Reply Brief, Pg, 9, ¶ 2), "The OCC's preemption regulations bolster this conclusion: 'Except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized [non-real estate lending or deposit-taking] powers are not applicable to national banks.' 12 C.F.R. §§ 7.4008(d)(1) & 7.4007(b)(1) (emphasis supplied). In other words, when a national bank is acting within its powers conferred under the National Bank Act, an express statement of federal law is required to permit state regulation. Similarly, with respect to the collection of debts, state laws relating to national banks' 'rights to collect debts' survive preemption only if those fall outside the enumerated categories of express preemption set forth in Sections 7.4007(b)(2) and 7.4007(d)(2) and only if the laws 'only incidentally affect' national bank operations. See 12 C.F.R. § 7.4007(c)(4), 7.4008(e)(4) & 7.4009(c)(2)(iv) (emphasis supplied)."

The specific sections above, 12 C.F.R. §§ 7.4008(d)(1) & 7.4007(b)(1) are general statements regarding applicability of state law:

> "*Applicability of state law.* (1) Except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized deposit-taking powers are not applicable to national banks."

> "*Applicability of state law.* (1) Except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized non-real estate lending powers are not applicable to national banks."

The issue here is not about taking deposits for checking or savings accounts or creating loans. As such, these sections are not relevant to this case. Likewise, sections 7.4007(b)(2) and 7.4008(d)(2), 7.4007(c)(4), and 7.4008(e)(4) are not relevant either. Section 7.4009(c)(2)(iv) is a follows:

> § 7.4009(c) *Applicability of state law to particular national bank activities.* (2) State laws on the following subjects are not inconsistent with the powers of national banks and apply to national banks to the extent that they only incidentally affect the exercise of national bank powers: (iv) Rights to collect debts;

This recognizes that state laws do in fact apply to national banks to the extent that they only incidentally affect the exercise of national bank powers. But the situation here is that Citibank is not exercising the powers of a national bank. The powers and permitted activities of a national bank do not include collecting debts for non-lenders. These are the financial activities of a financial institution under the GLBA, which supplies the express statement of federal law permitting state regulation.

Citibank states (Reply Brief, Pg. 9, ¶ 2 – continuing on to page 10), "Again, as confirmed by the OCC, Citibank is acting within its powers conferred under the National Bank Act when it transfers its credit card receivables to the Master Trust and, at the same time, seeks to collect the debt owed on the accounts." This statement is not true. Collecting on a debt which has been sold to a non-lender third party is not a power conferred under the National Bank Act. Citibank did not transfer its credit card receivables to the Master Trust, it sold them. What Citibank transferred was all its rights, title and interest in the receivables as well as all rights to future receivables and any and all payments associated with those

receivables. Citibank has clearly extinguished all rights to the receivables and along with it, any rights to collect the alleged debt receivables. Citibank has not provided a single shred of evidence proving that Citibank has reacquired ownership after they sold the alleged debt receivables in this lawsuit.

Citibank states (Reply Brief, Pg. 10, ¶ 2), "In summary, based on the foregoing authority, there can be no dispute that the OCC is charged with overseeing the activities of a national bank and specifically authorizes the securitization and servicing activities at issue." Actually, this is precisely what is in dispute. Nowhere has the OCC authorized these servicing activities for a national bank. Citibank has provided no documents from the OCC specifically authorizing a national bank to act as servicer to a non-lender.

Citibank states, (Reply Brief, Pg. 10, ¶ 2), "Defendant cannot displace that authority by seeking an order from this Court preventing or interfering with Citibank's exercise of its powers under the National Bank Act." First, Citibank has produced no authority authorizing it to act as servicer as a national bank, so there is nothing to displace. Second, Defendant is not seeking an order from this Court preventing or interfering with Citibank's exercise of its powers under the National Bank Act. The Defendant is demanding that Citibank prove it has ownership of the receivables in question in this lawsuit, which Citibank has refused to do, and subsequently prove it has standing in this Court.

The Idaho Legislature exempted national banks when they are acting in the capacity of a "regulated lender" from the ICAA. However, the Idaho Legislature specifically included the financial activities of financial institutions

engaging in the conduct of a collection agency. The GLBA also gives the State the authority to regulate this very same conduct.

Citibank states (Reply Brief, Pg. 10, ¶ 3), "not only is Citibank exempt from the ICAA because it is a regulated lender, Citibank is also not subject to the ICAA because: (i) Citibank is collecting a debt that it owns on its own behalf; and (ii) the Issuance Trust and Master Trust are under common ownership and control with Citibank, which triggers the ICAA's related entity exemption under I.C. § 26-2239(10)." Citibank is operating as a financial institution rather than a regulated lender because the role of "servicer" is not authorized for a national bank by the OCC or the National Bank Act. As such, Citibank is subject to state laws and regulation under the GLBA. Citibank is not collecting a debt it owns. Citibank clearly sold that debt, and has provided no evidence whatsoever that it has reacquired ownership of that debt. As such, Citibank has no standing in this Court. Citibank needs to read I.C. § 26-2239(10) again. The statute applies only if the party collecting is not in the business of collecting debts. Citibank, in its role and capacity as servicer, is in the business of debt collection, so the statute does not apply, even assuming that the trusts actually are under common control.

Citibank states (Reply Brief, Pg. 11, ¶ 1), "The documents submitted by Citibank in connection with the Supplemental Brief indisputably confirm that Citibank owns all the credit card accounts involved in the asset securitization process and that Citibank is seeking to collect a debt which it owns, thus precluding the ICAA's application. See I.C. §§ 26-2222, 26-2223; Purco Fleet

Servs., Inc. v. Idaho State Dept. of Fin., 140 Idaho 121, 90 P.3d 346, 350 (2004); February 5, 2007 Prospectus (Exh. A to the Supplemental Brief) at 101 ("Citibank (South Dakota) is the owner of all of the credit card accounts designated to the master trust.")" Actually, the documents submitted by Citibank confirm, by Citibank's own definition (UCC Article 9, South Dakota Statutes, Title 57A §9-102(2) and the Pooling and Servicing Agreement, Article II, §2.01 (above)) that Citibank sold the "accounts" to the Master Trust. Citibank owned the accounts which it designated to the Master Trust. Once designated, those accounts were sold to the Master Trust. Citibank no longer "owned" the accounts by their own definition.

In *PurCo*, an assignment was made by Thrifty Car Rental to PurCo for the purpose of collection. The Idaho Department of Finance determined that PurCo needed a permit to collect from an Idaho resident. That decision was upheld by the Supreme Court of Idaho. The deciding factor was whether the assignment was for the purpose of collection, or was assigned in its entirety, without recourse. PurCo was collecting a debt for Thrifty Car Rental and did not have the required permit. In the case of Citibank, the assignment (if one exists – so far Citibank has not produced one shred of evidence to prove it either owns the alleged debt receivable or that the alleged debt receivable was assigned to Citibank) would be for the purpose of collection. Citibank, pursuant to the Pooling and Servicing Agreement is required to forward any recoveries to the Master Trust as follows:

Pooling and servicing Agreement, Section 2.07 (d) Delivery of Collections.

> In the event that such Seller receives Collections or recoveries, such Seller agrees to pay the Servicer all such Collections and Recoveries as soon as practicable after receipt thereof.
>
> Pooling and Servicing Agreement, Section 4.03 Collections and Allocations. (a) The Servicer will apply or will instruct the Trustee to apply all funds on deposit in the Collection Account as described in this Article IV and in each Supplement.
>
> Pooling and Servicing Agreement, Section 4.03(b) Collections of Finance Charge Receivables and Principal Receivables and Defaulted Receivables and Miscellaneous Payments will be allocated to each series on the basis of such series' Series Allocable Finance Charge Collections, Series Allocable Principal Collections, Series Allocable Defaulted Amount and Series Allocable Miscellaneous Payments and amounts so allocated to any Series will not, except as specified in the related Supplement, be available to the Investor Certificateholders of any other series.

Any and all Recoveries go back to the Master Trust. This requirement clearly places the alleged assignment as one for collection and not in its entirety. As in *PurCo*, Citibank would need the required permit from the Idaho Department of Finance in order to collect the alleged debt.

Citibank states (Reply Brief, Pg. 11, ¶ 1), "February 5, 2007 Prospectus (Exh. A to the Supplemental Brief) at 101 ("Citibank (South Dakota) is the owner of all of the credit card accounts designated to the Master Trust."). Specifically, although the credit card receivables are transferred to the Master Trust, Citibank continues to 'own the accounts themselves.'" For the sake of discussion, if the account balance is zero, is there a debt obligation on the part of the borrower? The answer is no. The debt obligation follows the receivables, which represent the actual debt. If that debt is paid off, the debt obligation ends. When Citibank sold the alleged debt receivables to the Master Trust, Citibank was paid for those debt receivables by the Issuance Trust. The account balance was effectively

zero. What Citibank actually "owns", if it owns the "account" at all, is an account with a zero balance. There is no debt obligation owed to Citibank. That obligation follows the receivables, into the Master Trust. In order for Citibank to have reacquired the receivables and the associated debt obligation, there must be a paper trail – the 8 documents generated when, and if, a debt obligation is actually removed from the Master Trust and returned to Citibank. Citibank needs to produce those 8 documents to prove that it has actually acquired ownership of the debt obligation. Without those documents, Citibank has no standing in this Court.

Citibank states (Reply Brief, Pg. 11, ¶ 1), "Importantly, Citibank retains the right to change the terms of the accounts, including, without limitation, the fees, finance charges, interest rates or minimum monthly payments. Id. At 20. There are 'no restrictions on Citibank (South Dakota)'s or its affiliates' ability to change the terms of the credit card accounts designated to the master trust,' regardless of how such changes may effect the payment patterns on the credit card receivables in the Master Trust. Id. At 20-21." For the most part, Citibank's effect and operation of changing terms is transparent to the operation involving the Master Trust. Citibank simply transfers each receivable as it is created to the Master Trust. Citibank's terms and conditions extant with each transaction exist with Citibank only until the end of the business day, the time at which Citibank transfers the receivable to the Master Trust. The interest, finance charge, fees and minimum payment become attached to the debt receivable, and become the property of the Master Trust (the Trust Assets). Citibank's claim that this

establishes ownership is no more valid that a salesman declaring that he owns an item for which he has negotiated the terms of a sale. As established above, the Master Trust owns the accounts, the receivables and the debt obligations, not Citibank.

Citibank states (Reply Brief, Pg. 11, ¶ 2), "Thus, in addition to the fact that Citibank is a regulated lender exempt from the ICAA, the ICAA also does not apply to Citibank because Citibank is seeking to collect debts on accounts that it owns and for its own benefit, and not on another's behalf." This is not true. The Pooling and Servicing Agreement clearly states that any and all Recoveries in Collection go to the Master Trust. Citibank is not collecting for its own benefit, but for the benefit of the Master Trust. Citibank is not collecting on a debt that it owns; it is collecting on a debt that the Master Trust owns. Citibank is collecting on behalf of the Master Trust. Citibank has produced no documents whatsoever proving otherwise. Stating that Citibank is collecting on a debt it owns and for its own benefit is a misrepresentation of a material fact.

Citibank states (Reply Brief, Pg. 11, ¶ 2), "Defendant's contention that Citibank is subject to I.C. § 26-2223(9) because Citibank acquired her Account (and the underlying debt) from the Master Trust after the Account was in default is false." *(Emphasis added). The actual quote from the* DEFENDANT'S MEMORANDUM ON THE IDAHO COLLECTION AGENCY ACT (Pg. 2 of 17, ¶ 2) is "The tacit admission which appears in footnote 2, below, indicates that the Receivables involved were in fact in the Citibank Credit Card Master Trust I (hereinafter "the Master Trust") and Citibank acquired the Receivables for

collection after the Receivables were both delinquent and in default." (Emphasis added). Citibank substituted "Account" for the Defendant's use of "Receivables", claiming that Citibank retained ownership of the "Account". This is another unscrupulous act relating to collections by Citibank. This is also another misrepresentation of a material fact.

Citibank continues, "Citibank has always owned the Account, including prior to the Account being charged-off and prior to filing the instant collection case. The fact that the receivables relating to the Account may have been removed from the Master Trust when the Account was charged-off does not change the fact that Defendant's debt, and the corresponding obligation to repay such debt, is owed to Citibank, and not to the Master Trust." (Emphasis added). Citibank clearly sold the alleged debt receivables, all rights, title, interest and future payments and future receivables to the Master Trust. Citibank must prove, by producing the documents proving ownership that it actually owns what it claims to own. Without those documents, Citibank does not have standing in this Court. Again, the fact that Citibank states that the receivables may have been removed from the Master Trust is prima facia evidence that the receivables have not been removed from the Master Trust. Citibank, as plaintiff, must prove each element of their case, which means Citibank must prove, by evidence – not claim of counsel, that they actually own the alleged debt receivable as claimed in their complaint. If one element fails, their whole case fails. The Defendant is demanding proof of ownership of the receivables involved in this lawsuit. This Court also ordered Citibank to produce those documents. Citibank must produce

the documents proving they own the alleged debt receivables, or their complaint must be dismissed.

Citibank states (Reply Brief, Pg. 12, ¶ 2), "Put differently, the transfer of credit card receivables to the Master Trust is an unrelated transaction, separate and apart from Citibank's credit relationship with Defendant. On this point, the OCC instructs that the credit relationship between Defendant and Citibank continues to exist unchanged after transfer of the receivables to the Master Trust. See Exh. A (Asset Securitization) at 8 (recognizing that benefit of asset securitization process is that 'originating bank is often able to maintain the customer relationship.') & 10 (stating that duties of original lender as 'servicer' include customer service, payment processing, collection actions and default management)." The actual OCC quote is: "Because borrowers often do not realize that their loans have been sold, the originating bank is often able to maintain the customer relationship." (Emphasis added). Here the very agency charged with regulating the national banking system is recognizing that the bank is misrepresenting a material fact. The bank, in selling the debt receivables and changing roles from originator to servicer, has materially changed position within the agreement. Having sold the receivables, the level of risk and exposure for Citibank has also changed materially. The bank has a legal obligation to disclose a material change in position to the other party. Not doing so is fraud by deception due to non-disclosure of a material term.

Citibank states (Reply Brief, Pg, 12, ¶ 3), "Citibank remains obligated to perform under the card agreement governing the Account, and Defendant

remains obligated to, among other things, repay the debt incurred on the Account." This statement is not true. Citibank's obligation under the card agreement ended when Citibank sold the alleged debt receivables. Citibank's claimed obligation is under the Pooling and Servicing Agreement, not the original card agreement. The Defendant is obligated to the Master Trust, which owns the alleged debt receivables and the associated alleged debt obligation. There is no obligation on the part of the Defendant to Citibank.

Citibank states (Reply Brief, Pg. 12, ¶ 3), "This is different than the situation in which ownership of an account is assigned to a different, unrelated financial institution and such institution then assumes Citibank's rights and obligations under the governing card agreement. In that case, the credit relationship is altered and the new institution attains, among other things, the right to collect any debt owed." To the best of Defendant's understanding, the Master Trust is legally, operationally and functionally a different financial institution from Citibank. The credit relationship was in fact altered. The Master Trust owned the alleged debt receivables including all rights, title and interest. The sale was without recourse – the sale was final. The Master Trust assumed, among the rights sold with the receivables, the rights and obligations which had been Citibank's. If the obligations of Citibank had not been part of the rights sold to the Master Trust, the Master Trust could not assign those rights to Citibank as "servicer", if in fact it has done so.

Here, Citibank applies the term "financial institution". There must be some recognition on the part of Citibank that they are operating as a financial institution

under the GLBA rather than as a national bank under the OCC and the NBA. This term is specifically defined in the GLBA and that same federal act explicitly does not preempt state regulatory control over these "financial institutions".

Citibank states (Reply Brief, Pg. 12, ¶ 3), "Here, there is nothing to suggest that Citibank is doing anything but collecting a debt on its own behalf that Defendant owes to Citibank." The fact that Citibank sold the receivables, was paid for the receivables, assigned all rights, title and interest in the receivables to the Master Trust, forwarded all of the payments to the Master Trust, and is obligated to forward any money recovered in this lawsuit to the Master Trust, all suggest that Citibank is not collecting a debt on its own behalf. Actually, the facts suggest Citibank's statement is not true.

Citibank again cites *Davis* (supra). The Idaho Department of Finance, in its amicus brief stated that part of its purpose was to, "(2) protect the public from unscrupulous collectors." This Court is directed to *Burgos* (supra), where even after a collection agency renegotiated the agreement with Nancy Burgos, Citibank reported her car as "stolen" to the police, resulting in her arrest and confiscation of her car. Somehow, Citibank does not consider this as unscrupulous.

Citibank states (Reply Brief, Pg. 13, ¶ 4), "Citibank is merely seeking to collect on an Account that it owns, and the securitization process has no bearing on Citibank's ability to obtain the proceeds of the debt. Moreover, Defendant fails to establish that the securitization process has resulted in any unscrupulous collection conduct." To the Defendant, the fact that Citibank sold the alleged

debt receivables, along with all rights, title and interest, was paid for those receivables, and has provided no proof whatsoever that Citibank has reacquired ownership of those receivables, coupled with the fact that Citibank materially changed position in the agreement and continued to collect payments on a debt it did not own without notifying the Defendant, represents unscrupulous conduct. Citibank's conduct has a great deal to do with Citibank's ability to obtain the proceeds of the alleged debt.

Citibank states (Reply Brief, Pg. 13, ¶ 4), "Indeed, Defendant is not a party to, and has no relationship with, the securitization process and the servicing of the Trusts. Accordingly, because Citibank seeks to collect on the Account for its own benefit, it is not subject to the ICAA." Whether Defendant has a "relationship" with the securitization process is not the point. Defendant is a party to the agreement and Citibank materially changed position and terms in the agreement and did not notify the Defendant. Citibank had a duty to notify the Defendant of any material changes in the agreement and neglected to do so. Citibank is collecting for the benefit of the Master Trust, as demonstrated above.

Citibank states (Reply Brief, Pg. 13, ¶ 5), "Citibank, as well as the Master and Issuance Trusts, are exempt from the ICAA because the Trusts are under common ownership and control with Citibank." As demonstrated above, Citibank may, or may not, be exempt from the ICAA, but the Trusts are not exempt. The Trusts are holding trusts, are not lenders, regulated or otherwise, and cannot qualify for exemption. While Citibank is operating in the capacity of agent for the Master Trust, Citibank also does not qualify for exemption under the ICAA.

Citibank states (Reply Brief, Pg, 13-14, ¶ 5), "Here, the documents demonstrate Citibank is the primary beneficiary of, and exerts direct control over, the Issuance and Master Trusts. See Exh. A to the Supplemental Brief at 1-2 (Citibank 'is the manager of the issuance trust, and is responsible for making determinations with respect to the issuance trust and allocating funds received by the issuance trust.') & 34 (Citibank 'is the sole owner of the beneficial interests in the issuance trust.')" Stating that Citibank is the sole owner of the beneficial interests in the issuance trust is an exaggeration. Citibank is paid for the receivables it sold to the Master Trust through the Issuance trust. This ends Citibank's beneficial interest regarding the receivables sold. Subsequent to that, the beneficial interest resides with the investors. As a demonstration of that fact, if the trust experiences a default, the receivables in the Master Trust are to be sold on the open market, and the money recovered is to be sent to the investors, not to Citibank.

Citibank states (Reply Brief, Pg. 14, ¶ 1), "Defendant makes much of the fact that, under the Pooling and Servicing Agreement, Citibank sells the receivables to the Master Trust and purportedly relinquishes control over the receivables to the trustee of the Issuance trust." (Emphasis added). This statement is not true. Carroll has repeatedly pointed out that the receivables were sold to the Master Trust. Carroll has never stated that control was relinquished to the Issuance Trust. The only reference to the Issuance Trust was in pointing out that Citibank was paid for the receivables by the Issuance Trust. Ownership and control over the receivables has always been with the Master

Trust, not the Issuance Trust. This is another misrepresentation of a material fact.

Citibank states (Reply Brief, Pg. 14, ¶ 1), "Likewise, the Master Trust does not have any employees and 'does not engage in any activity other that acquiring and holding trust assets and the proceeds of those assets, issuing series of investor certificates, making distributions and related activities.'" This makes Carroll's point that the Master Trust is not a lender, regulated or otherwise, and cannot qualify for exemption under the ICAA.

Citibank states (Reply Brief, Pg. 14, ¶ 2), "Simply put, neither the trustee nor the Master Trust obtain any indicia of ownership as part of the securitization process." This is a misrepresentation of a material fact. Citibank sold the receivables to the Master Trust. A "sale" is a transfer of ownership. Citibank had to warrant that it had "marketable title" to the receivables in order for the receivables to become "eligible". That marketable title was assigned to the Master Trust which means the Master Trust then "owned" the receivables. Citibank assigned "all rights" to the receivables to the Master Trust. These "rights" represent ownership to the property, in this case, the receivables. Citibank assigned all "interest" in the receivables to the Master Trust. An entity's "interest" in something is also a form of ownership, which was transferred to the Master Trust. How Citibank can state that the Master Trust does not obtain any indications of ownership when it is obvious that real ownership goes to the Master Trust is unexplained. In addition, if, as Citibank states, the Master Trust obtains no indications of ownership, how can the Master Trust issue certificates

to the Issuance Trust? The Master Trust would issue a certificate of what, exactly? The actual certification issued by the Master Trust is a certificate of ownership of the credit card receivables.

Citibank states (Reply Brief, Pg. 14, ¶ 2), "Defendant does not refute the structure of the asset securitization process set forth in the Supplemental Brief. See Supplemental Brief at 4-6." This statement is not true. Carroll has repeatedly refuted Citibank's description of the securitization process. Citibank "securitized" the credit card receivables by selling them, as authorized by the OCC and the NBA. That ended Citibank's securitization process. Citibank's role and participation with the Master Trust as "servicer" is separate and distinct from the securitization process. As servicer, Citibank is operating as a financial institution clearly defined under the GLBA in activities clearly expressed in the GLBA and is subject to state regulation, as clearly laid out in the GLBA.

Citibank states (Reply Brief, Pg. 14, ¶ 2), "As that process makes clear, Citibank does not transfer ownership of the accounts, and Defendant does not cite any authority to the contrary." In this REBUTTAL, Carroll has pointed out where, by Citibank's own definition, the account was sold to the Master Trust (through the UCC Article 9-102(2) definition). The "authority" here is the Prospectus, created by Citibank for the SEC and the UCC.

Citibank states (Reply Brief, Pg. 14, ¶ 2), "Rather, Citibank simply is pledging its assets as part of an investment vehicle (in an OCC-approved transaction) that has nothing whatsoever to do with Defendant. Most importantly, Citibank owns and controls that investment vehicle." This is a misrepresentation

of a material fact. Citibank did not pledge its assets as part of an investment vehicle; Citibank sold its assets. This has a direct impact on the Defendant in that it significantly changes who the alleged debt obligation belongs to, and who has standing in this Court. Citibank has produced no documents or other evidence proving that it owns the alleged debt receivables. Without that proof, Citibank does not have standing in this Court. Citibank's statement that it owns the investment vehicle is also not true. The investment vehicle is the Master Trust and the Issuance Trust, which by the very nature of a trust, is not "owned" by its grantor. The specific operation of the trust is to sever ownership from the grantor, placing ownership and control in the trustee, which is Deutsche Bank Trust Company Americas, not Citibank.

Citibank states (Reply Brief, Pg, 15, ¶ 2), "In the end, Citibank not only is the primary beneficiary of the Issuance Trust and Master Trust, but Citibank has direct control over such Trusts." This statement is also an exaggeration. As explained above, Citibank is simply paid for the receivables sold to the Master Trust by the Issuance trust. The primary beneficiaries of the Issuance Trust are the investors (Certificateholders), not Citibank.

Citibank states (Reply Brief, Pg. 15, ¶ 3), "The securitization process utilized by Citibank, and approved by the OCC, does not change this analysis. Nor does the securitization process remove Citibank as the owner of the Account at issue." Actually, it does change the analysis. The securitization process, approved by the OCC which Citibank utilized, was to sell the receivables. As demonstrated above, under the UCC 9-102(2) definition specified in the

Prospectus, Citibank also sold the Account at issue. Even if this Court finds that Citibank still retained the Account, the account balance is effectively zero, as there are no receivables left in the account. Citibank sold them and was paid for those receivables. Citibank's utilization of the securitization process, by selling the receivables, certainly does remove Citibank as the owner of the receivables at issue.

III

CONCLUSION

Citibank has made misrepresentations of material facts, statements which conflict with established facts, and tortured explanations of its own documents. What Citibank has not done is provide a single document proving it has ownership of the alleged debt receivables involved in this lawsuit, even under order of this Court. Ownership of the alleged debt receivables and the associated alleged debt obligation is the essential element of standing in this Court, as well as an essential element in Citibank's claim against the Defendant. Without the demanded proof of ownership, Citibank has no standing in this Court, and Citibank's claim against the Defendant fails.

Dated this 2ND day of October, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of this REBUTTAL TO CITIBANK'S REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT this 2ND day of October, 2007, by Certified Mail # 7005 1160 0002 7630 4477 to the attorney for the Plaintiff at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1717
Boise, ID 83701-1617

David F. Capps

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant,	Case No. **CV-2006-37067** **DEFENDANT'S BRIEF ON THE DEPOSITION OF IDAHO DEPARTMENT OF FINANCE CONSUMER BUREAU CHIEF MICHAEL LARSEN**

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll"), and submits her BRIEF ON THE DEPOSITION OF IDAHO DEPARTMENT OF FINANCE CONSUMER BUREAU CHIEF MICHAEL LARSEN as follows.

I

INTRODUCTION

This deposition was taken by Carroll in an effort to clarify the use of the term "third party" in Michael Larsen's affidavit previously submitted by Citibank (South Dakota), N.A. (hereinafter "Citibank"). Several facts became evident

during the deposition that impact this case. The primary realization which emerged is that there are three different regulatory agencies involved: the Office of the Comptroller of the Currency [OCC], which regulates national banks; the Idaho Department of Finance, Banking Division, which regulates state banks within the State of Idaho; and the Idaho Department of Finance, Consumer Division, which regulates entities other than banks in the State of Idaho. There is no overlap in the operation of these agencies. In fact, there are gaps created between the agencies by the very nature of their defined areas of regulation.

II

REGULATION OF NATIONAL BANKS

National banks are regulated by the OCC. State agencies, such as the Idaho Department of Finance, do not consider the actions of national banks because they do not fall under the specific authority determined by the State of Idaho for this department. The exemption for national banks appears in the Idaho Collection Agency Act. This exemption assumes that the national banks are being actively regulated by the OCC.

What has happened recently is that national banks, in order to compete with financial institutions, have gradually moved part of their operations out of the OCC defined and authorized banking activities of a national bank and into the non-banking activities of a financial institution as defined under the Gramm-Leach-Bliley Act [GLBA] of 1999. These non-banking activities specifically include the role of Servicer to a holding trust such as the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"). The net effect of this departure

from OCC regulated banking activities into the GLBA defined financial institution activities is that the bank is no longer operating under the regulatory control of the OCC, so the OCC is no longer monitoring and regulating these activities of the bank.

In the deposition of Michael Larsen, the lack of awareness of these non-banking activities was highlighted as follows (page 6, lines 15-25, and page 7, lines 1-12):

"Q. Are you familiar with the Office of the Comptroller of the Currency?"

"A. By name."

"Q. Just by name? Are you familiar with what they do – with what the OCC does?"

"A. I have a limited understanding of what they do."

"Q. Okay, are you familiar with the OCC handbook titled: Activities Permissible for a National Bank?"

"A. No."

"Q. Okay, do you expect banks to follow the OCC handbook while doing business in Idaho – national banks?"

"A. Do I?"

"Q. Do you expect them to follow the OCC guidelines and regulations?"

"A. Now, the department has a banking -- a Bureau of Financial Institutions that deals with banks."

"Q. Uh-hu."

"A. I do not in my position deal with depository institutions. So are you asking me my opinion?"

"Q. Well, we're trying to find out exactly how the department handles banks."

"A. Then you need to ask probably someone in that department – in that bureau within the department."

The Consumer Bureau of the Idaho Department of Idaho does not handle anything to do with banks, whether the bank is acting as a national bank or otherwise. The Idaho Department of Finance seems to be unaware that banks may operate outside of the authorization of a national bank. Even if that awareness was there, the consumer bureau does not currently consider the conduct of banks, state or national. While the Consumer Bureau is charged with enforcing the Idaho Collection Agency Act [ICAA], there is no awareness that the specific conduct outside of the authorized activities for a national bank, may subject a bank to the ICAA.

There is also no real awareness of what a national bank may or may not do by the Consumer Bureau of the Idaho Department of Finance as indicated in Michael Larsen's deposition (page 7, lines 19-25, page 8, lines 1-16):

"Q. There are two sections in the handbook where collection activities are authorized. The first one is on the third sheet, which is page 11 of the handbook and the section is highlighted. Would you, please read the highlighted section out loud?"

"A. Loan Collection and Repossession Services: National banks may offer loan collection and repossession services for other banks and thrifts, OCC interpretive

letter, parens, December 14th, 1983, end parens OCC interpretive letter, parens, March 15, 1971, end parens."

"Q. Are you familiar with this rule?"

"A. No."

"Q. Okay, the second section is on the fourth sheet, which is page 18. Would you read the highlighted section there?"

"A. Debt collection: National banks may collect delinquent loans on behalf of other lenders. May provide billing services for doctors, hospitals, or other service providers, and may act as an agent in the warehousing and servicing of other loans, OCC interpretive letter, parens, August 27, 1985, end parens."

"Q. Are you familiar with this rule?

"A. No."

There is no awareness on the part of the Bureau Chief of what a national bank should or should not be doing. The Idaho Department of Finance is not currently in a position to make a determination as to whether the conduct of a bank is, or is not, actually regulated.

The reality of modern-day banking entities is that they perform various roles which may, or may not, fall under the traditional banking activities previously defined. The role of Servicer for a Master Trust is just such a role. Acting as Servicer is not a defined or authorized activity for a national bank by the OCC. The OCC thus does not regulate the activities of a financial institution when acting as Servicer. As long as the state does not become aware of the change in activities from OCC defined and authorized banking to non-banking

activities defined under the GLBA, the bank continues to operate without regulation. This is the gap created between the regulatory agencies. The state assumes the OCC is regulating the bank because the bank is a national bank, normally exempt from state regulation, and the OCC assumes the state, or someone else, is regulating the non-banking activities under the GLBA and state statutes which regulate conduct other than that which is authorized for a national bank. In reality, no one is regulating the bank in its role as Servicer.

III

THIRD PARTIES

A national bank is authorized to collect for specific third parties who are identified by the OCC in the handbook "Activities Permissible for a National Bank." The Citibank Credit Card Master Trust I is not an authorized third party. The Idaho Department of Finance, Consumer Bureau, regulates non-banks in the State if Idaho. Bureau Chief Michael Larsen was asked (Page 11, Line 17-25), "Q. The third Parties is the whole reason we're here: It was vague. Can you clarify which third parties you mean?"

"A. I will try. Under the Idaho Collection Agency Act, there are some licensing requirements for individuals or businesses to collect for third parties. Third parties – as Bureau Chief of the Department of Finance my interpretation of third parties is another party besides – if a creditor is collecting on his or her or its own debts, that is not a third party to collect its debts."

This definition is consistent with this court's interpretation in *Mountain Peaks Financial v. Audra L. Edmonson and Michael J. Edmonson* and this

court's statement that a creditor has the right to collect its own debts without a permit. But if an individual, or a business, is collecting a debt which they do not own then a permit would be required. It is the *conduct* which is the basis for regulation, not the name or general classification of the entity. If a national bank is collecting on their own behalf, or for an authorized third party, such as another bank, lender or thrift, then that conduct falls under the regulation and authorization of the OCC, and does not require a permit from the Idaho Department of Finance. If, however, that conduct is outside of the authorized conduct for a national bank, then the conduct must be regulated in the same manner, and to the same extent, as the identical conduct of any other business or entity engaged in that particular conduct.

As Servicer for the Master Trust, Citibank's conduct is not that of a national bank, but that of a collection agent. Citibank sends out statements and collects payments which are passed on to the Master Trust. Any collections obtained as a result of lawsuits against consumers are also forwarded on to the Master Trust. Citibank sold the receivables to the Master Trust, assigning all rights, title and interest, including the right to receive payments, to the Master Trust. Citibank is not collecting a debt on its own behalf, nor is it collecting a debt for an authorized third party. Citibank's conduct is that of a collection agent, for which a permit is required in the State of Idaho. While the Idaho Department of Finance does not currently require a permit for national banks, that position is based on a lack of awareness and a lack of knowledge of the extent of the conduct of a national bank, such as Citibank, which falls outside of the regulation

and authorization of the OCC. It is up to this court, which has the evidence of collection agency conduct, outside of the authority for a national bank, before it, to make that determination.

Dated this 8th day of November, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF MAILING

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of the DEFENDANT'S BRIEF ON THE DEPOSITION OF IDAHO DEPARTMENT OF FINANCE BURAEU CHIEF MICHAEL LARSEN to the attorney for the Plaintiff, this 8th day of November, 2007, by Certified Mail # 7005 1160 0002 7630 4507 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

David F. Capps

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff/Counterdefendant,

vs.

MIRIAM G. CARROLL,

Defendant/Counterclaimant.

Case No. CV-2006-37067

ORDER GRANTING PLAINTIFF'S MOTION TO FILE REPLY BRIEF ON NOVEMBER 20, 2007

Plaintiff/Counterdefendant, Citibank (South Dakota) N.A. ("Plaintiff"), by and through its attorneys of record, Hawley Troxell Ennis & Hawley LLP, having filed a Motion to File Reply Brief On November 20,2 007, this Court being fully advised and having considered all the pleadings, motions, memoranda, and other documents on file herein; Defendant having no objection; and good cause appearing; therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff's Reply Brief to the Defendant's Brief On the Deposition of Idaho Department of Financial Consumer Bureau Chief, may be filed on or before November 20, 2007. At such time, the matter will be considered fully submitted.

DATED THIS 15 day of November, 2007.

By _____
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of November, 2007, I caused to be served a true copy of the foregoing ORDER GRANTING PLAINTIFF'S MOTION TO FILE REPLY BRIEF ON NOVEMBER 20, 2007 by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
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Boise, ID 83701-1617

XX U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
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Clerk of the Court

Miriam G. Carroll
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208-935-7962
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Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff/Counterdefendant,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll"), and submits her OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT as follows:

I

INTRODUCTION

Citibank (South Dakota), N.A. (hereinafter "Citibank") has submitted their Motion for Summary Judgment to this court without establishing standing, a cause of action, actual damages, or a right to relief upon which this court may

base its jurisdiction. Citibank complains that Carroll has not proceeded in good faith under Rule 11 of the Idaho Rules of Civil Procedure. This is not true. Carroll has proceeded in the good faith belief that Citibank has received credits which have not been applied to the account in question. During discovery, Carroll has found that this is exactly the case. Citibank has received full payment of the amount owing on the alleged debt and has not shown those payments on its statements.

In the affidavit of Terri Ryning dated the 17th day of January, 2007, no mention is made of the fact that Citibank sold the alleged debt to a third party, was paid for that alleged debt, has removed the liability and risk of the alleged debt from its records and has assigned all rights and interest in the alleged debt to a third party. Under Rule 11 of the I.R.C.P. Citibank, and the attorney representing Citibank, by signing the pleadings and other papers submitted to this court, certified that the motion or other paper, that to the best of the signer's knowledge, information, and belief after reasonable inquiry, was well grounded in fact and was warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. At the time of the filing of the Motion for Summary Judgment, Citibank, and the attorney representing Citibank, either knew, or should have known, that Citibank had no standing in this court, had no cause of action, no right to relief, no stake in the outcome of the lawsuit, and no ownership of the alleged debt.

Carroll submits that there was no reasonable inquiry into the facts by either Citibank, or the attorney involved in representing Citibank, and that Citibank proceeded to harass Carroll with this Motion for Summary Judgment and the voluminous filing of documents, substantially increasing Carroll's cost of litigation in violation of Rule 11 of the I.R.C.P. Carroll also claims that Terry Ryning, as Custodian of the Records for Citibank, has committed perjury by omission by concealing the sale of the alleged debt to a third party from Carroll and this court. The affidavit of Terry Ryning, as Custodian of Records, must reflect, not just her own personal knowledge, but the collective knowledge of Citibank. The knowledge of Citibank's sale of the alleged debt was publicly available, as demonstrated by the prospectus and prospectus supplement published on the EDGAR website of the Securities and Exchange Commission [SEC], and must have been known by Citibank who filed and published the information. Once the issue of standing and the existence of the sale of the alleged debt was introduced by Carroll, Citibank, and the attorney representing Citibank, were under an obligation to inquire into the issue and make sure that their actions were well grounded in fact. The fact that Citibank produced the Pooling and Servicing Agreement and submitted it to this court proves both Citibank, and the attorney representing Citibank, knew for a fact that the alleged debt had been sold and that Citibank had assigned all rights and interest in the alleged debt to a third party. To proceed beyond that point was a fraud upon this court.

The affidavit of Sheila R. Schwager likewise makes no mention of the fact that the alleged debt was sold to a third party. The attorney, Sheila R. Schwager, as an officer of the court, had, and continues to have, a duty to reveal to the court any information material to the case, even if it is detrimental to her client. The sale of the alleged debt, receivables and/or account to a third party is material to this case, as is the change in position and removal of the assumption of risk by Citibank within the agreement with Carroll without notification to the other party. By withholding material information and concealing the sale of the alleged debt in her affidavit, Sheila R. Schwager has acted unethically.

Citibank's fraud upon the court, perjured and unethical affidavits and continued prosecution of this case in violation of Rule 11 of the I.R.C.P. is a flagrant abuse of the legal process and should not be countenanced by this court.

II

CITIBANK HAS NO VALID CLAIM AGAINST CARROLL

Citibank, under repeated requests, demands, and order of this court, has refused to provide even a single document proving that Citibank owns the alleged debt. Citibank clearly sold the alleged receivables, and by their own definition, also sold the account to a third party, who now holds legal title to, and all rights involved in, the alleged debt. Citibank has provided no document whatsoever assigning any rights or indicia of ownership of any of the receivables, the account, or the alleged debt back to Citibank.

In *McCluskey v. Galland*, 95 Idaho 472, 511, P.2d 289 (Idaho 1973), the Supreme Court of Idaho held,

> "Where open account and notes payable to individual were assigned to corporation prior to commencement of action to recover on the notes and the open account, the individual assignor was not real party in interest and had no standing to prosecute an action to recover on the notes and open account and was not entitled to recover judgment thereon. Rules of Civil Procedure, rule 17(a); I.C. §§ 5-301, 5-302, 27-104."

Citibank is clearly not a real party in interest and is not entitled to maintain this action against Carroll. Citibank, and the attorney representing Citibank, have clearly known about their lack of standing since at least March of this year. Instead of seeking to dismiss the case and correct the standing issue, they have decided to perpetuate this fraud upon the court for the last eight months, and are continuing to do so. This is a clear example of abuse of the legal process.

Citibank clearly sold the receivables to the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"), transferring all rights, title and interest in those receivables to the Master Trust. Citibank was paid for those receivables by the Citibank Credit Card Issuance Trust (hereinafter "the Issuance Trust"). Citibank no longer has a stake in the alleged debt, and cannot claim that they were actually damaged.

The primary reason for selling the receivables to the Master Trust for securitization is to remove the alleged debt and the associated risk and liability from Citibank's books and pass that risk and liability on to the Master Trust and its investors. With the assumption of risk transferred to the Master Trust along with ownership of the alleged debt, Citibank is no longer at risk, and has no stake

in the outcome of this lawsuit. In *Federal Land Bank of Spokane v. Parsons*, 116 Idaho 545, 547-48, 777 P.2d 1218, 1220-21 (Ct. App. 1998), the court stated,

> "Because Plaintiff has a mere expectancy, they will not be entitled to the benefits of a successful suit."

Citibank must have a valid claim, standing, a valid cause of action, a palpable injury, and the probability that the recovery sought will satisfy the claimed injury. Citibank has none of those things.

III

STANDARD FOR SUMMARY JUDGMENT

Summary Judgment shall be rendered when the pleadings and evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law (I.R.C.P. 56(c)). The record is clear that there are disputed material facts in this case. It is also clear that Citibank is not entitled to judgment as a matter of law because Citibank does not have standing, a valid claim, a valid cause of action, a stake in the outcome, and is not a real party in interest. The minimum standards for Summary Judgment have not been met.

IV

CONCLUSION

Citibank has not produced even a single document proving it has ownership of the alleged debt, an assignment of the alleged debt, or any other fact that would give Citibank standing in this action. Citibank has essentially admitted that it sold the alleged debt and has received payment for those receivables. The Pooling and Servicing Agreement provided by Citibank clearly

states that the receivables have been sold to the Master Trust with all rights, title and interest in the receivables assigned and transferred to the Master Trust. Without proof of ownership, or a valid assignment, Citibank is not entitled to any relief by law. Consequently, this court should deny Citibank's Motion for Summary Judgment.

Dated this 23RD day of November, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF MAILING

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of the Defendant's OPPOSITION TO MOTION FOR SUMMARY JUDGMENT this 23RD day of November, 2007, by Certified Mail # 7005 1160 0002 7630 4521 to the attorney for the Plaintiff at the following address:

Sheila R. Schwager
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David F. Capps

Miriam G. Carroll
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Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant,	Case No. **CV-2006-37067** **MOTION TO DISMISS DUE TO LACK OF STANDING**

COMES NOW the Defendant, Miriam G. Carroll, (hereinafter "Carroll") and submits her MOTION TO DISMISS DUE TO LACK OF STANDING as follows:

I

THE FACTS

Citibank (South Dakota), N.A. (hereinafter "Citibank") filed this lawsuit against Carroll in an attempt to recover money which was allegedly owed to Citibank as stated in claim III of the complaint against Carroll. During the course

of discovery and subsequent briefing, the following information has been presented to this court:

1. According to the Pooling and Servicing Agreement dated as of May 29, 1991 as Amended and Restated as of October 5, 2001, pg 21, ¶ 5, (EXHIBIT A-2)

   "Section 2.01. Conveyance of Receivables. By execution of this Agreement, each of the Sellers does hereby sell, transfer, assign, set over and otherwise convey to the trustee, on behalf of the Trust, for the benefit of the Certificateholders, all its right, title and interest in, to and under the Receivables existing at the close of business on the Trust Cut-Off Date, in the case of receivables arising in the Initial Accounts, and on each Additional Cut-Off date, in the case of Receivables arising in the Additional Accounts, and in each case thereafter created from time to time until the termination of the Trust, all monies due or to become due and all amounts received with respect thereto and all proceeds (including "proceeds" as defined in the UCC) thereof. Such property, together with all monies on deposit in the Collection Account, the Series Accounts, any Series Enhancement and the right to receive certain Interchange attributed to cardholder charges for merchandise and services in the Accounts shall constitute the assets of the Trust (the "Trust Assets").

2. According to the Citibank Credit Card Issuance Trust Prospectus Supplement dated October 29, 2007, pg S-8, ¶ 3 (EXHIBIT B-2),

   "The credit card receivables in the master trust consist of principal receivables and finance charge receivables. Principal receivables include amounts charged by cardholders for merchandise and services and amounts advanced to cardholders as cash advances. Finance charge receivables include periodic finance charges, annual membership fees, cash advance fees, late charges and some other fees billed to cardholders."

3. According to the Citibank Credit Card Issuance Trust Prospectus Supplement dated October 29, 2007, pg 102, ¶¶ 8, 9 and 10 (EXHIBIT B-3),

   "In addition, Citibank (South Dakota) is required to make a lump addition if as of the end of any calendar week the total amount of principal receivables in the master trust is less than the greater of the following two amounts:
   - 105% of the aggregate outstanding Invested Amount of the master trust investor certificates, including the collateral certificate; and
   - 102% of the aggregate initial Invested Amount of master trust investor certificates that cannot increase in Invested Amount plus 102% of the aggregate outstanding Invested Amount of master trust investor

certificates that can increase in Invested Amount, including the collateral certificate."

4. According to the Citibank Credit Card Issuance Trust Prospectus Supplement dated March 9th, 2006, pg 101, ¶ 2, (EXHIBIT C-2), "The Sponsors",

> "Through these and other vehicles, the Banks have sponsored the issuance of over $140 billion of credit card receivable-backed securities in more than 230 transactions."

5. According to the Citibank Credit Card Issuance Trust Prospectus Supplement dated March 9th, 2006, pg AI-1, ¶ 2, (EXHIBIT C-3), "The Credit Card Business of Citibank (South Dakota)",

> "As of December 31, 2005, Citibank (South Dakota) serviced more than 65 million active credit card accounts representing more than $146 billion of receivables for credit card holders in the United States and Canada."

6. Citibank is required to maintain at least 105% of the security certificates issued as receivables in the Master Trust. There have been over $140 billion in security certificates issued. 105% of $140 billion equals $147 billion in credit card receivables. This represents 100% of the credit card receivables generated by Citibank. It is clear from the data shown that all of the credit card receivables have been sold to the Master Trust.

7. According to the Citibank Credit Card Issuance Trust Prospectus Supplement dated October 29, 2007, pg 105, ¶ 11, (EXHIBIT B-4),

> "Eligible receivables are credit card receivables – that constitute an "account" under the Uniform Commercial Code in effect in the State of South Dakota."

8. According to the South Dakota statutes, Title 57A defines "account" as:

> **§9-102(2)** "account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance,... (vii) arising out of the use of a credit or charge card or information contained on or for use with the card.

9. That the right to payment was assigned to the Citibank Credit Card Master Trust I (the Master Trust), along with the title and all other rights and interest in, to and under the receivables. Legal ownership of the receivables, the account, and the alleged debt now belong to Deutsche Bank Trust Company Americas, which is not a subsidiary, affiliate or agent of Citibank (South Dakota).

10. Citibank has produced no documents whatsoever proving that Citibank has received a valid assignment or any indicia of ownership of the receivables or the alleged debt involved in this lawsuit from the Master Trust.

The above identified EXHIBITS are attached hereto and based on the personal knowledge as testified to in the attached affidavit; the EXHIBITS are submitted as evidence.

II

THE LAW

Rule 17(a) of the Idaho Rules of Civil Procedure states,

"Rule 17(a). Real party in interest.
Every action shall be prosecuted in the name of the real party in interest."

A real party in interest includes the trustee of an express trust, such as Deutsche Bank Trust Company Americas, the trustee of the Citibank Credit Card Master Trust I. Since Citibank has sold the alleged receivables, alleged account and alleged debt to the Master Trust and assigned all rights, title and interest to the Master Trust, Citibank has no stake in the outcome of this lawsuit and has no cause of action against Carroll.

In *McCluskey v. Galland*, 95 Idaho 472, 511 P.2d 289 (Idaho 1973), the Supreme Court of Idaho held,

> "Where open account and notes payable to individual were assigned to corporation prior to commencement of action to recover on the notes and the open account, the individual assignor was not real party in interest and had no standing to prosecute an action to recover on the notes and the open account and was not entitled to recover judgment thereon. Rules of Civil Procedure, rule 17(a); I.C. §§ 5-301, 5-302, 27-104."

Here too we have a plaintiff (Citibank) who is seeking to recover on an open account who has assigned all rights to the alleged debt to another party (the Master Trust) prior to commencement of this action. Citibank has no standing and is not entitled to recover anything in this action.

In *Miles v. Idaho Power Co.*, 116 Idaho 635, the court stated,

> [5] "The doctrine of standing focuses on the party seeking relief and not on the issue the party wishes to have adjudicated. *Valley Forge College v. Americans United,* 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982).
> However, the major aspect of standing has been explained:
>
> > The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only a "distinct palpable injury" to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. (Citations omitted.)
> >
> > Thus to satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. (Citations omitted)."

Citibank has known that they lack standing in this case since at least late March of 2007, some 8 months now. During all of that time, Citibank has not provided even a single document proving it has ownership or a valid assignment

of the alleged receivables, alleged account, or the alleged debt. While initially standing may be alleged, once challenged, the standing of the plaintiff must be proved.

III

CONCLUSION

Citibank has had ample time to place proof of its ownership of the alleged debt and its standing on the record. Citibank's refusal to do so can only mean that no such proof exists. Citibank has sold the alleged receivables, the alleged account and the alleged debt, and has been paid for that sale. Without proof of ownership or a valid assignment, Citibank cannot now claim that it was injured and invoke this court's jurisdiction against Carroll. Carroll therefore moves this court to dismiss Citibank's claim against her for lack of standing. Because Citibank has continued its action against Carroll, knowing that it lacks standing for at least the last 8 months, burdening both Carroll and this court with voluminous documents, misrepresentations, exaggerations and tortured explanations of its own documents, Carroll also moves this court to dismiss Citibank's claim against Carroll with prejudice.

Dated this 27TH day of November, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF MAILING

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of the Defendant's MOTION TO DISMISS DUE TO LACK OF STANDING this 27TH day of November, 2007, to the attorney for the Plaintiff, by Certified Mail # 7005 1160 0002 7630 4585 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

Miriam G. Carroll
104 Jefferson Drive
Kamiah, ID 83536-9410
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant,	Case No. **CV-2006-37067** **AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS DUE TO LACK OF STANDING**

David F. Capps, being first duly sworn upon oath, deposes and says:

1. I am the husband of Miriam G. Carroll, the Defendant in this case.
2. I received a copy of the Pooling and Servicing Agreement dated as of May 29, 1991 as Amended and restated as of October 5, 2001 in the course of discovery from Citibank (South Dakota), N.A.

3. That no changes of any kind have been made to the copy of the Pooling and Servicing Agreement since I received it from Citibank (South Dakota), N.A.
4. That I have provided a true and correct copy of the first page of the Pooling and Servicing Agreement as well as a true and correct copy of page 21 of the same Pooling and servicing Agreement to be submitted as evidence identified as EXHIBIT A-1 and 2 respectively in the above captioned case.
5. That the Pooling and Servicing Agreement is a voluminous document and is available in its complete form upon request.
6. I downloaded a complete copy of the Citibank Credit Card Issuance Trust *Prospectus Supplement dated October* 29, 2007 from the EDGAR portion of the Securities and Exchange Commission website at www.sec.gov/edgar on the 5th day of November, 2007.
7. That no changes of any kind have been made to the Citibank Credit Card Issuance Trust Prospectus Supplement dated October 29, 2007.
8. That I have provided a true and correct copy of the first page of the same Citibank Credit Card Issuance Trust Prospectus Supplement, as well as a true and correct copy of page S-8, page 102 and page 105 of the same Prospectus Supplement as evidence identified as EXHIBIT B-1, 2, 3 and 4 respectively in the above captioned case.
9. That the Citibank Credit Card Issuance Trust Prospectus Supplement is a voluminous document and is available in its complete form upon request

or by downloading from the EDGAR portion of the Securities and Exchange Commission website at www.sec.gov/edgar.

10. That I downloaded a complete copy of the Citibank Credit Card Issuance Trust Prospectus Supplement dated February 15, 2005 from the EDGAR portion of the Securities and Exchange Commission website at www.sec.gov/edgar on the 26th day of November, 2007.

11. That no changes of any kind have been made to the Citibank Credit Card Issuance Trust Prospectus Supplement dated February 15, 2006.

12. That I have provided a true and correct copy of the first page of the same Citibank Credit Card Issuance Trust Prospectus Supplement, as well as a true and correct copy of page 101 and page AI-1 of the same Prospectus Supplement as evidence identified as EXHIBIT C-1, 2 and 3 respectively in the above captioned case.

13. That the Citibank Credit Card Issuance Trust Prospectus Supplement is a voluminous document and is available in its complete form upon request or by downloading from the EDGAR portion of the Securities and Exchange Commission website at www.sec.gov/edgar.

Further, the affiant sayeth naught.

Dated this 27TH day of November, 2007.

David F. Capps

State of Idaho)
) ss:
County of Idaho)

SUBSCRIBED AND SWORN before me this 27th day of November, 2007.

Signature of Notary

My commission expires 2/11/11.

SEAL

SALLY J. ROY
NOTARY
PUBLIC
STATE OF IDAHO

CERTIFICATE OF MAILING

I, David F. Capps, do hereby certify that I mailed a true and correct copy of this AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS DUE TO LACK OF STANDING to the attorney for the Plaintiff this 27TH day of November, 2007, by Certified Mail # 7005 1160 0002 7630 4545 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley, L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

EXHIBIT A-1

EXECUTION COPY

CITIBANK (SOUTH DAKOTA), N.A.,
Seller and Servicer,

CITIBANK (NEVADA), NATIONAL ASSOCIATION,
Seller,

and

BANKERS TRUST COMPANY,
Trustee

CITIBANK CREDIT CARD MASTER TRUST I

POOLING AND SERVICING AGREEMENT
Dated as of May 29, 1991
As Amended and Restated as of October 5, 2001

EXHIBIT A-2

(b) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(c) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles or regulatory accounting principles, as applicable. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles or regulatory accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(d) The agreements, representations and warranties of Citibank (South Dakota), Citibank (Nevada) and any Additional Seller in this Agreement in each of their respective capacities as Sellers and Servicer shall be deemed to be the agreements, representations and warranties of Citibank (South Dakota), Citibank (Nevada) and such Additional Seller solely in each such capacity for so long as Citibank (South Dakota), Citibank (Nevada) and such Additional Seller act in each such capacity under this Agreement.

(e) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; references to any Section, Schedule or Exhibit are references to Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term "including" means "including without limitation".

ARTICLE II

CONVEYANCE OF RECEIVABLES

Section 2.01. Conveyance of Receivables. By execution of this Agreement, each of the Sellers does hereby sell, transfer, assign, set over and otherwise convey to the Trustee, on behalf of the Trust, for the benefit of the Certificateholders, all its right, title and interest in, to and under the Receivables existing at the close of business on the Trust Cut-Off Date, in the case of Receivables arising in the Initial Accounts, and on each Additional Cut-Off Date, in the case of Receivables arising in the Additional Accounts, and in each case thereafter created from time to time until the termination of the Trust, all monies due or to become due and all amounts received with respect thereto and all proceeds (including "proceeds" as defined in the UCC) thereof. Such property, together with all monies on deposit in the Collection Account, the Series Accounts, any Series Enhancement and the right to receive certain Interchange attributed to cardholder charges for merchandise and services in the Accounts shall constitute the assets of the Trust (the "Trust Assets"). The foregoing does not constitute and is not intended to result in the creation or

EXHIBIT B-1

424B5 1 d424b5.htm PROSPECTUS SUPPLEMENT 2007-B6

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Filed Pursuant to Rule 424(b)(5)
File No. 333-131355
File No. 333-131355-01
File No. 333-131355-03

PROSPECTUS SUPPLEMENT DATED OCTOBER 29, 2007
(to Prospectus dated February 5, 2007)

Citibank Credit Card Issuance Trust

Issuing Entity

$200,000,000 5.00% Class 2007-B6 Notes of November 2010
(Legal Maturity Date November 2012)

Citibank (South Dakota), National Association

Sponsor and Depositor

The issuance trust will issue and sell	**Class 2007-B6 Notes**
Principal amount	$200,000,000
Interest rate	5.00% per annum
Interest payment dates	8th day of each May and November, beginning May 2008
Expected principal payment date	November 8, 2010
Legal maturity date	November 8, 2012
Expected issuance date	November 5, 2007
Price to public	$199,872,000 (or 99.936%)
Underwriting discount	$ 450,000 (or 0.225%)
Proceeds to the issuance trust	$199,422,000 (or 99.711%)

The Class 2007-B6 notes will be paid from the issuance trust's assets consisting primarily of an interest in credit card receivables arising in a portfolio of revolving credit card accounts.

The Class 2007-B6 notes are a subclass of Class B notes of the Citiseries. Principal payments on Class B notes of the Citiseries are subordinated to payments on Class A notes of that series. Principal payments on Class C notes of the Citiseries are subordinated to payments on Class A and Class B notes of that series.

You should review and consider the discussion under " Risk Factors" beginning on page 17 of the accompanying *prospectus before you purchase any notes.*

Neither the Securities and Exchange Commission nor any state securities commission has approved the notes or determined that this prospectus supplement or the prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The notes are obligations of Citibank Credit Card Issuance Trust only and are not obligations of or interests in any other person. Each class of notes is secured by only some of the assets of Citibank Credit Card Issuance Trust. Noteholders will have no recourse to any other assets of Citibank Credit Card Issuance Trust for the payment of the notes. The notes are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.

Underwriters

Citi

Banc of America Securities LLC

Credit Suisse

EXHIBIT B-2

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Limited Recourse to the Issuance Trust

The sole source of payment for principal of or interest on these Class B notes is provided by:

- the portion of the principal collections and finance charge collections received by the issuance trust under the collateral certificate and available to these Class B notes after giving effect to all allocations and reallocations; and
- funds in the applicable trust accounts for these Class B notes.

Class B noteholders will have no recourse to any other assets of the issuance trust or any other person or entity for the payment of principal of or interest on these Class B notes.

Master Trust Assets and Receivables

The collateral certificate, which is the issuance trust's primary source of funds for the payment of principal of and interest on these Class B notes, is an investor certificate issued by Citibank Credit Card Master Trust I. The collateral certificate represents an undivided interest in the assets of the master trust. The master trust assets include credit card receivables from selected MasterCard, VISA and American Express revolving credit card accounts that meet the eligibility criteria for inclusion in the master trust. These eligibility criteria are discussed in the prospectus under "The Master Trust—Master Trust Assets."

The credit card receivables in the master trust consist of principal receivables and finance charge receivables. Principal receivables include amounts charged by cardholders for merchandise and services and amounts advanced to cardholders as cash advances. Finance charge receivables include periodic finance charges, annual membership fees, cash advance fees, late charges and some other fees billed to cardholders.

The aggregate amount of credit card receivables in the master trust as of June 24, 2007 was $74,516,653,322, of which $73,554,874,807 were principal receivables and $961,778,515 were finance charge receivables. See "The

EXHIBIT B-3

- have not been identified as an account with respect to which the related card has been lost or stolen,
- have not been sold or pledged to any other party except for any sale to any seller of receivables to the master trust or any of its affiliates, and
- do not have receivables that have been sold or pledged to any other party other than any sale to a seller of receivables to the master trust.

In addition, the accounts designated to the master trust at the time of its formation in 1991 were required to be MasterCard or VISA revolving credit card accounts with a cardholder billing address located in the United States or its territories or possessions or a military address.

Citibank (South Dakota) believes that the accounts are representative of the eligible accounts in its portfolio and that the inclusion of the accounts, as a whole, does not represent an adverse selection by it from among the eligible accounts. See "The Master Trust Receivables and Accounts" attached as Annex I to the supplement to this prospectus for financial information on the receivables and the accounts.

Citibank (South Dakota) is compensated for the transfer of the credit card receivables to the master trust from two sources: (1) the net cash proceeds received by Citibank (South Dakota), as owner of the seller's interest, from the sale to third party investors of certificates representing beneficial ownership interests in receivables held through the master trust and (2) the increase in the amount of the seller's interest, which represents the beneficial interest in the pool of receivables retained by Citibank (South Dakota) and not sold to third party investors.

Citibank (South Dakota) may, at its option, designate additional credit card accounts to the master trust, the receivables in which will be sold and assigned to the master trust. This type of designation is referred to as a "lump addition." Since the creation of the master trust, Citibank (South Dakota)—and Citibank (Nevada) prior to its merger into Citibank (South Dakota)—has made lump additions and Citibank (South Dakota) may make lump additions in the future. See Annex I to the accompanying prospectus supplement for a listing of recent lump additions.

In addition, Citibank (South Dakota) is required to make a lump addition if as of the end of any calendar week the total amount of principal receivables in the master trust is less than the greater of the following two amounts:

- 105% of the aggregate outstanding Invested Amount of the master trust investor certificates, including the collateral certificate; and
- 102% of the aggregate initial Invested Amount of master trust investor certificates that cannot increase in Invested Amount plus 102% of the aggregate outstanding Invested Amount of master trust investor certificates that can increase in Invested Amount, including the collateral certificate.

EXHIBIT B-4

Eligible receivables are credit card receivables

- that have arisen under an eligible account,
- that were created in compliance in all material respects with all requirements of law and pursuant to a credit card agreement that complies in all material respects with all requirements of law,
- with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any governmental authority required to be obtained or given in connection with the creation of that receivable or the execution, delivery, creation and performance by Citibank (South Dakota) or by the original credit card issuer, if not Citibank (South Dakota), of the related credit card agreement have been duly obtained or given and are in full force and effect,
- as to which at the time of their transfer to the master trust, the sellers or the master trust have good and marketable title, free and clear of all liens, encumbrances, charges and security interests,
- that have been the subject of a valid sale and assignment from the sellers to the master trust of all the sellers' right, title and interest in the receivable or the grant of a first priority perfected security interest in the receivable and its proceeds,
- that will at all times be a legal, valid and binding payment obligation of the cardholder enforceable against the cardholder in accordance with its terms, except for bankruptcy-related matters,
- that at the time of their transfer to the master trust, have not been waived or modified except as permitted under the pooling and servicing agreement,
- that are not at the time of their transfer to the master trust subject to any right of rescission, set off, counterclaim or defense, including the defense of usury, other than bankruptcy-related defenses,
- as to which the sellers have satisfied all obligations to be fulfilled at the time it is transferred to the master trust,
- as to which the sellers have done nothing, at the time of its transfer to the master trust, to impair the rights of the master trust or investor certificateholders, and
- that constitutes an "account" under the Uniform Commercial Code in effect in the State of South Dakota.

If the sellers breach any of these representations or warranties and the breach has a material adverse effect on the investor certificateholders' interest, the receivables in the affected account will be reassigned to the sellers if the breach remains uncured after a specified cure period. In general, the seller's interest will be reduced by the amount of the reassigned receivables. However, if there is not sufficient seller's interest to bear the reduction, the sellers obligated to contribute funds equal to the amount of the deficiency.

EXHIBIT C-1

424B5 1 d424b5.htm FINAL PROSPECTUS SUPPLEMENT

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Filed Pursuant to Rule 424(b)(5)
File No. 333-121228
File No. 333-121228-01
File No. 333-121228-02
File No. 333-121228-03

PROSPECTUS SUPPLEMENT DATED MARCH 9, 2006
(to Prospectus dated February 15, 2006)

Citibank Credit Card Issuance Trust

Issuing Entity

$750,000,000 5.30% Class 2006-A3 Notes of March 2016

(Legal Maturity Date March 2018)

Citibank (South Dakota), National Association
Citibank (Nevada), National Association

Sponsors, Depositors and Originators of the Issuance Trust

The issuance trust will issue and sell	**Class 2006-A3 Notes**
Principal amount	$750,000,000
Interest rate	5.30% per annum
Interest payment dates	15th day of each March and September, beginning September 2006
Expected principal payment date	March 15, 2016
Legal maturity date	March 15, 2018
Expected issuance date	March 16, 2006
Price to public	$747,127,500 (or 99.617%)
Underwriting discount	$ 3,000,000 (or 0.400%)
Proceeds to the issuance trust	$744,127,500 (or 99.217%)

The Class 2006-A3 notes will be paid from the issuance trust's assets consisting primarily of an interest in credit card receivables arising in a portfolio of revolving credit card accounts.

The Class 2006-A3 notes are a subclass of Class A notes of the Citiseries. Principal payments on Class B notes of the Citiseries are subordinated to payments on Class A notes of that series. Principal payments on Class C notes of the Citiseries are subordinated to payments on Class A and Class B notes of that series.

You should review and consider the discussion under "Risk Factors" beginning on page 18 of the accompanying prospectus before you purchase any notes.

Neither the Securities and Exchange Commission nor any state securities commission has approved the notes or determined that this prospectus supplement or the prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The notes are obligations of Citibank Credit Card Issuance Trust only and are not obligations of or interests in any other person. Each class of notes is secured by only some of the assets of Citibank Credit Card Issuance Trust. Noteholders will have no recourse to any other assets of Citibank Credit Card Issuance Trust for the payment of the notes. The notes are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other

EXHIBIT C-2

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THE SPONSORS

Citibank (South Dakota) and Citibank (Nevada) established the master trust (originally known as the Standard Credit Card Master Trust I) on May 29, 1991, and the issuance trust on September 12, 2000. The Banks are the only sellers into the master trust and the sole beneficiaries of the issuance trust.

Citibank (South Dakota) and Citibank (Nevada) have sponsored programs of securitization of credit card receivables since 1988 through the establishment of securitization vehicles such as the National Credit Card Trust (1988 and 1989), the Standard Credit Card Trust (1990), the Euro Credit Card Trust (1989 and 1990), the Money Market Credit Card Trust (1989) and the master trust. Through these and other vehicles, the Banks have sponsored the issuance of over $140 billion of credit card receivable-backed securities in more than 230 transactions. The Banks also sponsor the DAKOTA commercial paper program through the issuance trust.

Citibank (South Dakota) establishes the credit and risk criteria for the origination and acquisition of credit card accounts owned by it, including the accounts in the master trust. The Bank's credit card business is described under "The Credit Card Business of Citibank (South Dakota)" which is set forth in Annex I to this prospectus.

Citibank (South Dakota)'s role and responsibilities as servicer of the credit card receivables in the master trust are described under "The Master Trust—The Servicer."

THE MASTER TRUST

Citibank Credit Card Master Trust I is a New York common law trust formed by Citibank (South Dakota) and Citibank (Nevada) in May 1991 to securitize a portion of their portfolios of credit card receivables. The master trust is operated pursuant to a pooling and servicing agreement among Citibank (South Dakota), as seller and servicer, Citibank (Nevada), as seller, and Deutsche Bank Trust Company Americas, as trustee.

The Banks have acquired, and may acquire in the future, credit card receivables in accounts owned by their affiliates and transfer those receivables to the master trust. In addition, other affiliates of the Banks may in the future sell credit card receivables to the master trust by becoming additional sellers under the pooling and servicing agreement.

The master trust does not engage in any activity other than acquiring and holding trust assets and the proceeds of those assets, issuing series of investor certificates, making distributions and related activities.

The master trust has no employees and does not conduct unrelated business activities.

Master Trust Assets

The master trust assets consist primarily of credit card receivables arising in a portfolio of revolving credit card accounts, and collections on the accounts. The Banks sell and assign the credit card receivables to the master trust. The receivables arise in accounts that are generated

EXHIBIT C-3

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ANNEX I

This annex forms an integral part of the prospectus.

THE CREDIT CARD BUSINESS OF CITIBANK (SOUTH DAKOTA)

General

Citibank (South Dakota) is the master trust servicer as well as the owner of all of the credit card accounts designated to the master trust. Citibank (South Dakota) services credit card accounts at its facilities in Sioux Falls, South Dakota, and through affiliated credit card processors pursuant to interaffiliate service contracts.

Citibank (South Dakota) began issuing credit cards and servicing credit card accounts in 1981, and began servicing and investor reporting on securitizations of credit card receivables in 1988. As of December 31, 2005, Citibank (South Dakota) serviced more than 65 million active credit card accounts representing more than $146 billion of receivables for credit card holders in the United States and Canada.

Citibank (South Dakota) is a member of MasterCard International and VISA. MasterCard and VISA credit cards are issued as part of the worldwide MasterCard International and VISA systems, and transactions creating the receivables through the use of those credit cards are processed through the MasterCard International and VISA authorization and settlement systems. If either system were to materially curtail its activities, or if Citibank (South Dakota) were to cease being a member of MasterCard International or VISA, for any reason, an early amortization event with respect to the Collateral Certificate could occur, and delays in payments on the receivables and possible reductions in the amounts of receivables could also occur.

The MasterCard and VISA credit card accounts owned by Citibank (South Dakota) were principally generated through:

- applications mailed directly to prospective cardholders;
- applications made available to prospective cardholders at the banking facilities of Citibank (South Dakota), at other financial institutions and at retail outlets;
- applications generated by advertising on television, radio, the internet and in magazines;
- direct mail and telemarketing solicitation for accounts on a pre-approved credit basis;
- solicitation of cardholders of existing nonpremium accounts for premium accounts;
- applications through affinity and co-brand marketing programs; and
- purchases of accounts from other credit card issuers.

Acquisition and Use of Credit Cards

Each applicant for a credit card provides information such as name, address, telephone number, date of birth and social security number, and each application is reviewed for

FILED
AT 8:24 O'CLOCK A.M.

DEC 10 2007

ROSE E. GEHRING
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (South Dakota), N.A.

Plaintiff,

v.

MIRIAM G. CARROLL,

Defendant.

Case No.: CV 06-37067

MEMORANDUM DECISION AND ORDER

This case comes before me on Citibank's motion for summary judgment. The issues presented are whether Citibank has standing and whether Citibank is exempt from complying with the Idaho Collection Agency Act (ICAA).

I. FACTS

This is a collection action involving credit card debt. Citibank is a national bank chartered under the laws of the United States and located in South Dakota. Citibank issued a credit card to Miriam Carroll in 1999, which Ms. Carroll used for the next five years. Payment was due on Ms. Carroll's credit card account ("account") thirty days after she received her monthly account statements. Ms. Carroll has defaulted in her payments. The principal balance due on her account now totals $24,567.91. Citibank filed a complaint on October 6, 2005 to recover this balance due on the account.

Citibank like many other national banks has participated in asset securitization—"the structured process, whereby interests in loans and other receivables are packaged, underwritten, and sold in the form of "asset backed securities." *Asset Securitization*, Comptrollers Handbook at 2 (1997). Specifically, Citibank sold to Master Trust the receivables on its accounts including Ms. Carroll's. The Master Trust then issued Collateral Certificates—investor certificates representing an undivided ownership interest

in the receivables-- to the Issuance Trust. The Issuance Trust used these Collateral Certificates to secure notes sold to third party investors.

Although the Issuance Trust and the Master Trust are separate entities from Citibank, they are both directly or indirectly controlled in part by Citibank. Citibank is the sole beneficiary and ultimate controller for the Issuance Trust, and the Issuance Trust is the primary certificate holder of the Master Trust. Ms. Carroll contends that Citibank no longer owns her account and is therefore acting on behalf of the Master and Issuance Trust as a debt collector.

Citibank is trying to collect the debt on Ms. Carroll's account without first obtaining a permit from the Idaho Director of Finance. The Idaho Collection Agency Act requires persons operating as collection agency to first obtain a permit, unless they are a regulated lender. IDAHO CODE § 26-2223(1); IDAHO CODE § 26-2239.

II. CONTENTIONS

1. Ms. Carroll contends that Citibank does not have standing because it transferred the receivables of Ms. Carroll's Credit Card Account with Citibank to the Master Trust.
2. Citibank contends that it does have standing because it transferred to the Master Trust only the account receivables, not the account itself.
3. Ms. Carroll contends that even if Citibank has standing, Citibank cannot collect the debt owed by Ms. Carroll because Citibank has not obtained a permit from the Idaho Department of Finance as required for debt collectors under the ICAA.
4. Citibank contends it is exempt from complying with the ICAA because it is a national bank regulated by the Office of the Comptroller of Currency (the OCC).

5. Ms. Carroll contends that Citibank, in trying to collect Ms. Carroll's debt, is acting as a "servicer" for the non-lending company, the Master Trust, and that this role of "servicer" is unauthorized and unregulated by the OCC because it is outside the scope of national banking activities. She therefore contends hat Citibank is not exempt from ICAA compliance in collecting Ms. Carroll's debt.
6. Citibank contends that servicing a loan owned by a third party is not outside the scope of its national banking activities and is regulated by the OCC, thereby exempting Citibank from ICAA compliance.

III. DISCUSSION

A. Standing

To be entitled to bring an action, a party must have standing to sue. In order to have standing, a plaintiff must allege or demonstrate "an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Bowles v. Pro Indiviso, Inc.* 132 Idaho 371, 375, 973 P.3d 142, 146 (Idaho 1999). A crucial inquiry in determining standing is "whether the plaintiff has alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers on his behalf. *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

Ms. Carroll contends that Citibank lacks standing because it transferred the credit card receivables ("receivables") on her account to the Master Trust. Ms. Carroll questions whether the receivables have been transferred back to Citibank and she also asks me to compel discovery on the ownership of the receivables. Citibank counters that discovery is unnecessary. It posits that even if it does not own the receivables, it has standing to collect

Ms. Carroll's credit card debt because it still owns Ms. Carroll's account. Citibank claims that it transferred to the Master Trust only the money that it collects, which are the receivables, but that it still owns the credit card agreement ("agreement") and Ms. Carroll's obligation to pay money under that agreement.

Nothing in the evidence suggests that Citibank transferred to the Master Trust anything more than the receivables on Ms. Carroll's account.[1] To the contrary, Citibank Credit Card Issuance Trust's Prospectus specifically provides that "[t]he master trust owns the credit card receivables generated in designed credit card accounts, but Citibank (South Dakota) or one of its affiliates will *continue to own the accounts themselves*." Prospectus, Citibank Credit Card Issuance Trust at 20 (February 5, 2007) (emphasis added).

The transfer of the account is not definitionally included in the transfer of the receivables as argued by Ms. Carroll. The receivables are separate from the account, and one can be transferred without the other. The record reflects that Ms. Carroll's account was retained by Citibank. As owner of the account, Citibank has standing to collect the debt owed on the account. It is of no moment that Citibank contractually obliged itself to transfer the money it collects on its accounts to the Master Trust. Citibank's obligation to the Master Trust to transfer the money collected does not affect Ms. Carroll's contractual relationship with and obligation to Citibank. I therefore conclude that Citibank has

[1] Ms. Carroll submits a Supplemental Prospectus to support her contention that the Master Trust, not Citibank owns the credit card account. *Carroll's Motion for Show Cause Hearing*, Aff. A, Prospectus Supplement, Table of Contents. In this Supplemental Prospectus it states that "Eligible receivables are credit card receivables . . . that constitute an "account" under the Uniform Commercial Code in effect in the State of South Dakota." The Uniform Commercial Code as adopted in the South Dakota Code defines account as the following: "'account', except as used in 'account for' means a right to payment of a monetary obligation, whether or not earned by performance . . . arising out of the use of a credit or charge card or information contained on or for use with the card." South Dakota Code § 9-102(2).
These definitions of "account" and "receivables" do not establish Master Trust, as owner of the receivables, to be the owner of Ms. Carroll's credit card account. Rather, they simply clarify that Master trust has a right as owner of the credit card receivables to receive from Citibank the payments Citibank receives on its credit card accounts.

standing to bring this suit to collect the credit card debt owed by Ms. Carroll on the account.

B. Citibank's Exemption from the Idaho Credit Collection Act

Assuming in the alternative that Citibank has standing, Ms. Carroll contends that Citibank is not permitted to collect her credit card debt because it has not obtained a permit from the Idaho Department of Finance as required for debt collectors under the ICAA. Under the ICAA no person may operate as a collection agency without first obtaining a permit from the Director of Finance. IDAHO CODE § 26-2223(1). Regulated lenders, however, are exempt from complying with this provision of the ICAA. IDAHO CODE § 26-2239.

Citibank contends it is a "regulated lender" and thus exempt from the ICAA because it is a national bank regulated exclusively by the OCC. *Citing* 12 U.S.C. § 93(a); *Watters v. Wachovia Bank, N.A.*, 127 S.Ct. 1559, 1564 (2007) (stating that the OCC is the exclusive regulator of national banks). Ms. Carroll acknowledges that Citibank is a national bank regulated *in part* by the OCC, but argues that when Citibank acts outside of its capacity as a national bank, it is not regulated by the OCC and thus not exempt from complying with ICAA's provisions. Ms. Carroll insists that when Citibank collects her credit card debt, Citibank is acting as a loan "servicer" for Master Trust. Because Master Trust is a non-lending company, Ms. Carroll contends that Citibank is acting outside of its capacity as a national bank by servicing a debt owned by the Master Trust.

Citibank, on the other hand, contends that even if Ms. Carroll is correct in her assertion that Citibank is collecting her debt in the capacity of a loan servicer for Master Trust

instead of in the capacity of owner of the account, its actions are nonetheless authorized and regulated by the OCC, thereby qualifying it for an ICAA compliance exception.

I have already decided that Citibank is the owner of the account. The issue then becomes whether or not a national bank is authorized and regulated by the OCC to collect, or "service," its *own* debts. Although it is not necessary to the resolution of this dispute, I will also consider Ms. Carroll's contention that a national bank acts outside of its capacity as a national bank when "servicing" loans owned by third, non-lending parties, thereby disqualifying the bank from exemption from the ICAA.[2]

Ms. Carroll concedes that when Citibank is acting in its capacity as a national bank, itis a regulated lender exempt from compliance with the ICAA. She also concedes that "it is both usual and necessary for banks to undertake collection activities with respect to their own delinquent loans." *OCC Interprretive Letter*, 1985 WL 151323, at 4 (Aug. 27, 1985); *Ms. Carroll's Rebuttal to Citibank's Reply Brief in Support of Summary Judgment*, at 18. There is no factual dispute in the record that Citibank owns Ms. Carroll's credit card account. Citibank is therefore acting in its capacity as a national bank by bringing this suit to collect the debt due on Mr. Carroll's account. Consequently Citibank is a regulated lender exempt from complying with the ICAA. IDAHO CODE § 26-2239.

Even if Citibank no longer owns Ms. Carroll's account and is instead collecting the debt as a "servicer" on behalf of the Master Trust, Citibank is still exempt from complying with the ICAA. The OCC handbook persuades me that National Banks are authorized and regulated by the OCC to service loans sold to third parties in the asset securitization process.

[2] I do so because the scope of a national bank's authority to collect debts without an ICAA permit is likely to become a recurring issue in the several credit card collection cases now pending in Idaho and Clearwater Counties.

The OCC explicitly authorizes a national bank to securitize credit card receivables, permitting national banks "to either sell credit card receivables or to use them as collateral for an investment security." OCC Interpretive Letter No. 540. Citibank has sold numerous credit card receivables, including the ones from Ms. Carroll's credit card account to the Master Trust in a securitization process. Even after selling these receivables, it is within Citibank's role as a national bank as explained by the OCC Handbook to continue servicing the accounts.

The OCC Handbook--a compendium of national bank policies, procedures and guidelines issued by the OCC—states that the "securitization process redistributes risk by breaking up the traditional role of a bank into a number of specialized roles: originator, *servicer*, credit enhancer, underwriter, trustee, and investor." *Comptroller's Handbook*, at 7 (emphasis added). It explains the role of "servicers" as follows: "[t]he originator of a pool of securitized assets usually continues to service the securitized portfolio. (The only assets with an active secondary market for servicing contracts are mortgages). Servicing includes customer service and payment processing for the borrowers in the securitized pool and *collection actions* in accordance with the pooling and servicing agreement." *Comptroller's Handbook*, at 10 (emphasis added).

The fact that the OCC handbook states that "the originator usually *continues* to service the securitized portfolio" implies that the originator is authorized to service loans or receivables *after* they have been sold in the securitization process. This role is made manifest in the Handbook's section on "Originators" which specifically states "originators create and often *service* the assets *that are sold* or used as collateral for asset-backed securities." *Comptroller's Handbook*, at 9 (emphasis added).

These provisions in the Comptroller's Handbook make it evident that the OCC anticipates that national banks will service loans and receivables sold in the securitization process and that the OCC continues to regulate banks acting in this servicer role.[3] Thus, even if Citibank is collecting Ms. Carroll's credit card debt as a servicer on an account sold to the Master Trust in Citibank's securitization process, it is still exempt from complying with the ICAA and is not obliged to obtain a permit from the Director of Finance to collect others' debts.

Because I granted the parties leave to brief only the qualifications of Michael Larsen of the Idaho Department of Finance to testify, I have not considered the other issues raised by Ms. Carroll. Ms. Carroll filed nothing that impugns Mr. Larsen's qualifications to testify. I therefore have considered his affidavit. *See Davis v. Professional Business Services, Inc,* 109 Idaho 810 (1985).

IV. CONCLUSION

1. Citibank has standing to sue because it still owns Ms. Carroll's credit card account, even though the receivables from this account have been sold to the Master Trust.

[3] Ms. Carroll repeatedly cites OCC Interpretive Letters to support her contention that national banks are not authorized to service loans/debts sold in the securitization process. For example, she cites OCC Interpretive Letter August 27, which states "National banks may collect delinquent loans on behalf of other lenders. May provide billing services for doctors, hospitals, or other service providers, and may act as an agent in the warehousing and servicing of other loans." At first blush this interpretive letter lends credence to Ms. Carroll's argument as it authorizes debt collection merely of *other lenders* or *service providers*, neither which category includes the Master Trust for whom Citibank is allegedly collecting on behalf of. Nevertheless, as Citibank points out, this particular interpretive letter was issued in response to a specific question submitted to the OCC as to whether national banks could collect the debts of other lenders or doctors, hospitals or other service providers. As this OCC interpretive letter was authored for the purpose of answering the specific questions submitted, it should not now be relied upon by me as guidance on an issue that was not before the OCC when issuing the letter. My best source for guidance is the OCC Handbook which specifically addresses the issue at hand, namely whether servicing loans/debts sold in the securitization process is a recognized and regulated role of national banks like Citibank.

2. It is within the capacity of a national bank to collect debts either owned or sold in the securitization process. Therefore Citibank, in collecting the debt owed by Ms. Carroll, is a regulated lender exempt from complying with the ICAA

V. ORDER

Citibank's motion for summary judgment is therefore GRANTED. Citibank shall submit a judgment consistent with this Memorandum Decision and Order within ten days of its date.

It is so ordered, this the 10th day of December, 2007

JOHN BRADBURY
DISTRICT JUDGE

Miriam G. Carroll
104 Jefferson Drive
Kamiah, ID 83536-9410
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

MOTION FOR RECONSIDERATION

COMES NOW the defendant, Miriam G. Carroll (hereinafter "Carroll"), and submits her MOTION FOR RECONSIDERATION under Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure for the following reasons:

1. Citibank (South Dakota), N.A. (hereinafter "Citibank"), is not a real party in interest under Rule 17(a) of the Idaho Rules of Civil Procedure and has no right to relief.
2. Citibank misrepresented the amount due on the alleged debt.

3. Citibank failed to disclose any amount received from insurance and any other source which materially altered the amount due on the alleged debt in violation of this court's order to disclose that information.
4. Citibank failed to disclose in its computations of the alleged debt amounts received on the account that materially pertained to the extent of the damages claimed in violation of this court's order to disclose that information.
5. Hearsay evidence was improperly introduced into the court record.

1. Rule 17(a)

Rule 17(a) of the Idaho Rules of Civil Procedure states,

> "Rule 17(a). Real party in interest.
> Every action shall be prosecuted in the name of the real party in interest."

A real party in interest includes the trustee of an express trust, such as Deutsche Bank Trust Company Americas, the trustee of the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"), who holds legal ownership of the alleged debt. Since according to the Prospectus, Prospectus Supplement and the Pooling and Servicing Agreement already in the court record, Citibank has sold the alleged receivables, alleged account and alleged debt to the Master Trust and assigned all rights, title and interest to the Master Trust, Citibank has no stake in the outcome of this lawsuit and has no cause of action against Carroll.

In *McCluskey v. Galland*, 95 Idaho 472, 511 P.2d 289 (Idaho 1973), the Supreme Court of Idaho held,

> "Where open account and notes payable to individual were assigned to corporation prior to commencement of action to recover on the notes and the open account, the individual assignor was not real party in interest and had no

> standing to prosecute an action to recover on the notes and the open account and was not entitled to recover judgment thereon. Rules of Civil Procedure, rule 17(a); I.C. §§ 5-301, 5-302, 27-104."

Here too we have a plaintiff (Citibank) who is seeking to recover on an open account who has assigned all rights to the alleged debt to another party (the Master Trust) prior to commencement of this action. The Supreme Court of Idaho clearly stated that once the alleged debt (the receivables in this case) is assigned to another party (the Master Trust in this case), the assignor (Citibank in this case) is no longer a real party in interest and is not entitled to recover judgment thereon.

Citibank has provided no documents whatsoever proving that they have ownership of the alleged debt. Indeed, the evidence supplied by Citibank regarding the Prospectus, Prospectus Supplement, and the Pooling and Servicing Agreement all clearly state that all rights, title and interest in the receivables (the actual alleged debt) have been sold and assigned to a third party (the Master Trust).

In addition, Citibank has supplied the affidavit of Crystal Britt (EXHIBIT A) dated the 22nd day of July, 2005, stating that "Citicorp Credit Services, Inc. (USA), referred to as "CCSI/USA" herein... By contract, CCSI/USA has agreed to collect debt owed to Citibank (South Dakota), N.A. on its credit card accounts." This is another assignment which falls under the above Idaho Supreme Court ruling. If, as indicated in the sworn affidavit of Crystal Britt, Citibank actually owned the alleged debt and assigned that debt to Citicorp, then Citicorp Credit Services, Inc. (USA) would become a real party in interest as a result of the assignment, and Citibank would also not be able to recover judgment in this case. As is plain from the pleadings, Citicorp Credit Services, Inc. (USA) is not the plaintiff, nor has Citicorp Credit Services been joined as a necessary

party to this litigation. Neither has the Master Trust been joined as a necessary party to this litigation. Only Citibank (South Dakota) N.A. is listed as the plaintiff, who has provided two pieces of conflicting evidence indicating that it has assigned the alleged debt to two other parties. Nowhere has Citibank provided any evidence whatsoever that it has received an assignment, or any indicia of ownership, from either the Master Trust or Citicorp Credit Services, Inc (USA). Under the existing evidence, Citibank (South Dakota) is not a real party in interest and has no right to relief, nor is Citibank entitled to a judgment on the alleged debt.

2. Citibank Misrepresented the Amount Due

Citibank claims to have retained the "account" in this case, but has not provided an accurate record of the activities of the receivables in the account. Carroll has supplied records indicating that Citibank has sold the receivables (the actual alleged debt) in the account in question. Citibank has essentially admitted that it sold the actual alleged debt to another party (the Master Trust) and has been paid for that alleged debt, yet none of the records of the sale of the alleged debt has appeared on any of the statements of the "account" provided by Citibank. This is a misrepresentation of the actual account balance.

In addition, during the course of discovery Citibank asked the defendant to detail any errors in the account statements. Carroll identified 149 errors on the identified statements, including 3 late fees, 42 finance charges, 1 over limit fee and 28 incorrect balances. These identified errors on the statements involved have not been objected to or refuted by Citibank and stand as accepted errors in the account statements. Citibank has made no adjustments for the errors in the accounting of the amount due.

3. Failure to Disclose Amount Received from Insurance

Citibank was required, without a direct discovery request, to disclose any and all insurance policies, the payments from which would affect the damages or the amount due. The Prospectus, Prospectus Supplement and the Pooling and Servicing discuss the existence of an insurance policy and require making certain allowances in the amounts involved with the receivables; and yet Citibank has not declared any such policy, even under order of this court to do so, and has made no adjustment whatsoever in the stated amount due which resulted from the collection of the insurance benefits. This is deception by failure to disclose, and contempt of court for not following the order of the court.

4. Failure to Disclose Amounts Received that Alter Damages

Citibank sold the actual alleged debt involved in this case, received payment for the sale of that alleged debt and failed to disclose the amount received from the sale of the alleged debt. This failure to disclose materially alters the claimed amount of damages. When the payments for the sale of the alleged debt are included, Citibank cannot prove any damages, and without proof of damages, there is no cause of action against Carroll. Disclosure of the computations of damages was required by order of this court. Failure to disclose those computations and the payments received by Citibank for the sale of the alleged debt is not only contempt of court, but fatal to Citibank's case against Carroll.

5. Hearsay Evidence Improperly Introduced.

A. This case involves a claim in contract. In order to recover on its claim, plaintiff was required to prove up the elements of a contract, and the breach of that contract

by defendant. Since plaintiff was unable to introduce authentic copies of an actual agreement between the parties, plaintiff's claim hinged upon whether the record evidence demonstrated a pattern of dealings between the parties on an account stated basis.

B. In the instant case, the Court improperly admitted and relied upon inadmissible hearsay evidence in order to craft a judgment in favor of plaintiff. Specifically, the Court allowed into evidence unauthenticated copies of account statements and other hearsay evidence which plaintiff introduced for the purpose of establishing that plaintiff loaned money to defendant, and that defendant owed plaintiff a sum of money due to a default. The admission of unauthenticated copies of documentary evidence was in violation of the Rules of Evidence, and resulted in extreme prejudice to the defendant. Absent the improper admission of these inadmissible hearsay exhibits, the record is devoid of any evidence to support the plaintiff's claim. Thus, based upon the record as it should have properly stood, judgment should have been entered in favor of defendant.

C. For a number of different reasons, the evidence upon which the Court based its judgment was improperly admitted. First of all, the record reflects that the witness who plaintiff used to sponsor the exhibits was incompetent to authenticate the unauthenticated copies of account statements and checks. Plaintiff's witness, testified under oath that she worked in the Litigation Division of a sister company to Citibank, not even the named plaintiff in this case. In her capacity as manager in that department, the witness was provided what purport to be account billing statements and other documents in preparation for litigation, well after the time that the documents were created. The witness is not the Custodian of the Records for plaintiff, and in fact did not competently testify as to the basic foundational elements regarding the billing system or software that plaintiff used to prepare the alleged account statements, a prerequisite for admission of computer generated business records. As such, the witness was incompetent to authenticate the hearsay exhibits.

D. Testimony, whether live or in the form of an affidavit, to the effect that a witness has reviewed a loan file and that the loan file shows that a debtor is in default is hearsay and incompetent; rather, the records must be introduced after a proper foundation is provided. *New England Savings Bank v. Bedford Realty Corp.*, 238 Conn. 745, 680 A.2d 301, 308 – 309 (1996), *later op.*, 246 Conn. 594 (1998); *Cole Taylor Bank, supra.* It is the business records that constitute the evidence, not the testimony of the witness referring to them. *In re A. B.*, 308 Ill.App.3d 227, 719 N.E.2d 348, 241 Ill.Dec. 487 (2d Dist. 1999). Clearly, the facts of the instant case required that more foundation be provided prior to an entry of judgment.

E. *Grand Liquor Co. v. Department of Revenue* (1977), 67 Ill. 2d 195, addressed the question of the evidentiary effect given to a Department of Revenue tax correction based upon a computer printout resulting from electronic data processing. (See also *People v. Mormon* (1981), 97 Ill. App. 3d 556, *aff'd* (1982), 92 Ill. 2d 268.) In *Grand Liquor Co.*, we cited the Mississippi Supreme Court case of *King v. State ex rel. Murdock Acceptance Corp.* (Miss. 1969), 222 So. 2d 393, 398, for guidelines for determining the admissibility of computer printouts of business records stored on electronic computing equipment. We held that such printouts are admissible where it is shown that: (1) the electronic computing equipment is recognized as standard equipment; (2) the entries are made in the regular course of business at or reasonably near the time of the occurrence of the event recorded; and (3) the foundation testimony satisfies the court that the sources of information, method and time of preparation indicated its trustworthiness and justify its admission. *Grand Liquor Co.*, 67 Ill. 2d at 202, citing *King*, 22 So. 2d at 398. In the instant case, plaintiff's witness did not satisfy the foundational requirements for the admissibility of the alleged account billing statements.

F. Plaintiff has failed to produce any admissible factual evidence demonstrating to this Court that the defendant borrowed money from the plaintiff, or that the defendant promised to pay the plaintiff anything. In addition, the plaintiff has failed to introduce legally admissible evidence of damages that defendant has allegedly suffered by the alleged default of defendant. Absent the introduction of this

evidence by a competent fact witness with first hand knowledge of the material facts at issue, the complaint contains no set of facts to support a claim that would justify the recovery requested.

G. Pleadings and unauthenticated exhibits introduced by incompetent fact witnesses, and statements of counsel are not record evidence, and cannot be used to support plaintiff's complaint. Absent the production of certified copies of the original contract or note, along with a certified account ledger introduced by a competent fact witness with first hand knowledge of the execution of an agreement between plaintiff and defendant, this Court lacked record evidence to support the judgment entered.

H. Finally, all of plaintiff's alleged evidence is countered by the sworn affidavit of fact introduced into the record by the defendant, which denies each and every allegation in plaintiff's complaint, and raises facts in direct contradiction to the hearsay evidence presented into the record by the plaintiff.

Based upon the foregoing it is clear that the facts, when viewed in the light most favorable to the defendant, indicate conclusively that there are numerous issues of material fact at issue in this matter, and the entry of summary judgment was inappropriate as a matter of law.

WHEREFORE, defendant respectfully requests that this Honorable Court vacate the summary judgment that was entered on December 10th, 2007, and set this matter for trial, as is defendant's right.

Dated this 23rd day of December, 2007.

VERIFICATION

Miriam G. Carroll, defendant herein, certifies that she has read the matters set forth herein, and that to the best of her knowledge, information and belief, formed after reasonable inquiry, believes that they are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of

existing law, and that they are not imposed for any improper purpose such as unnecessary delay or to harass or needlessly increase the cost of litigation.

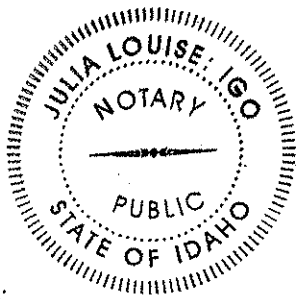
DATED this 23rd day of December 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

NOTARY PUBLIC

Sworn and signed before me this 23 day of December, 2007.



Julia Louise Igo

Signature of Notary

My Commission expires May 15, 2012.

CERTIFICATE OF MAILING

I, David F. Capps, do hereby certify, under penalty of perjury, that I mailed a true and correct copy of the above MOTION FOR RECONSIDERATION to the attorney for the Plaintiff this 24th day of December, 2007, by Certified Mail #7006 2150 0003 4550 2475 at the following address:

Sheila R. Schwager
Hawley Troxell Ennis & Hawley L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

Citibank (South Dakota), N.A.

Plaintiff,

Vs AFFIDAVIT

MIRIAM G CARROLL
5424181031382596

Defendant,

STATE OF MISSOURI)
COUNTY OF PLATTE) ss:

Crystal Britt, who is of lawful age, after first being duly sworn, deposes and says as follows:

1. Citicorp Credit Services, Inc. (USA), referred to as "CCSI/USA" herein, and the Plaintiff Citibank (South Dakota), N.A. are both wholly owned subsidiaries of Citigroup, Inc. By contract, CCSI/USA has agreed to collect debt owed to Citibank (South Dakota), N.A. on its credit card accounts.
2. By virtue of the described contract relationship and my employment, all information contained in and/or about delinquent Citibank (South Dakota), N.A. credit card accounts are made available to me for the purpose of collecting such delinquent debt. I have personal knowledge of all relevant financial and account information concerning Citibank (South Dakota), N.A. account number 5424181031382596 , which is made the subject of this lawsuit, including: the name and address of the debtor, the history of all charges representing loans, finance charges, fees imposed; payments made and credits received; the outstanding balance due; that Defendant did apply for and was issued that credit card account by Citibank (South Dakota), N.A.; that Defendant did thereafter use or authorize the use of the credit card account for the purpose of obtaining loans to purchase goods and services or cash advances; that Defendant has been provided monthly statements required by the Federal Truth In Lending Act describing the amount due; that Defendant did fail to make timely payments on the credit card account according to the terms of the card agreement and as requested on monthly statements of account; and that Defendant is presently in default of those terms. By virtue of such default the entire balance of $24,567.91 on the account is presently due and owing.
3. Demand for payment of the balance owing was made more that thirty (30) days prior to making this affidavit, after which the attorneys representing Citibank (South Dakota), N.A. were retained for the purpose of collecting the delinquent debt owed on the credit card account referenced above.
4. Exhibit A attached hereto is a hard copy print out of the financial information, including the balance owing, residing on the Citibank (South Dakota), N.A. computer system as of the date the account(s) was (were) referred for collection to the attorney maintaining this lawsuit. The balance owing on the date of referral has remained unchanged from and after that date.
5. The debt reflected on Exhibit A is delinquent, past due and remains due and owing. Plaintiff is the party and entity to whom the delinquent debt is owed. There are no set-offs, credits, or allowances due or to become due from the Plaintiff to the Defendant, other than those set forth herein or set forth on Exhibit A attached hereto.
6. Defendant has made no claim of being an active member in the military services of the United States or any state thereof, and to the best of my knowledge, the defendant is not an active member in military service. Nor has Defendant requested reduction of the interest rate on the account to six percent (6%) pursuant to the Soldiers and Sailors Civil Relief Act.

Affiant

Attorney Management Specialist
Title

Personally known to me, subscribed and sworn to before me, a notary public for the state of Missouri, this 22 day of July, 2005

(SEAL) My Commission Expires: _____

RECEIVED
JUL 2005
WILSON & MCCOLL 204

CHERYL PRESTON
Notary Public - Notary Seal
State of Missouri
Clay County
My Commission Expires June 11, 2006

ID.8945.1

Miriam G. Carroll
104 Jefferson Drive
Kamiah, ID 83536-9410
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE IOF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. CV-2006-37067

OBJECTIONS

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll"), and lodges her objections as follows:

1. Carroll objects to the issuance of the court's MEMORANDUM DECISION AND ORDER filed the 10th day of December, 2007 on the grounds that this is a procedural error as the case was not ripe for a decision. A case is not ripe for a decision by the court until all of the motions have been heard and decided. There is one motion which has not been heard by the court

and several others that have been heard and have received no decision as listed below.

2. Carroll objects that her MOTION FOR SHOW CAUSE HEARING dated the 21st day of June, 2007 has been heard, but has not been decided, on the grounds that it is a procedural error not to rule on a motion. Carroll deserves a decision on her motion. This court stated that Carroll had a right to know who owned the alleged debt. Citibank (South Dakota) N.A. (hereinafter "Citibank") has provided no documentation whatsoever as to the true ownership of the alleged debt. Carroll has submitted documents indicating that the alleged debt was sold to the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"), which this court appears to have accepted as fact. Citibank has provided no documentation, even after repeated requests, proving that any indicia of ownership have been acquired by Citibank of the alleged debt.
3. Carroll objects that her MOTION TO COMPEL DISCOVERY dated the 8th day of August, 2007 has been heard, but has not been decided, on the grounds that it is a procedural error not to rule on a motion. Carroll deserves a decision on her motion.
4. Carroll objects that her via voce motion on the 25th day of November, 2007, moving this court to order Citibank to provide proof that it has ownership of the alleged debt has not been decided, on the grounds that it is a procedural error not to rule on a motion. Carroll deserves a decision on her motion.

5. Carroll objects that her MOTION TO DISMISS DUE TO LACK OF STANDING dated the 27th day of November, 2007 has not been heard on the grounds that it is a procedural error not to hear a motion and it is also a procedural error not to rule on a motion. Carroll deserves to have her motion heard and ruled upon by this court.
6. Carroll objects that Citibank is not a real party in interest and does not have a cause of action against Carroll on the grounds that it is a procedural error, as Rule 17(a) of the Idaho Rules of Civil Procedure requires that any action be prosecuted by the name of the real party in interest. Citibank has not provided any proof that it is in fact a real party in interest and as such has no cause of action and is not entitled to relief.

The above procedural errors have an adverse effect on the Defendant's case and constitute a denial of due process.

Dated this 31 ST day of December, 2007.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF MAILING

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of the Defendant's OBJECTIONS to the attorney for the Plaintiff, this 31 ST day of December, 2007, by certified Mail # 7006 2150 0003 4550 2482 at the following address:

Sheila R. Schwager
Hawley Troxell Ennis & Hawley L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

Miriam G. Carroll
104 Jefferson Drive
Kamiah, ID 83536-9410
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

DOCKETED

IDAHO COUNTY DISTRICT COURT
AT 11:23 FILED O'CLOCK A .M.
JAN 17 2008
ROSE E. GEHRING
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff,

vs.

MIRIAM G. CARROLL,

Defendant,

Case No. **CV-2006-37067**

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

COMES NOW the Defendant, Miriam G. Carroll (hereinafter "Carroll") and submits her BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION as follows:

RULE 17(a)

Rule 17(a) of the Idaho Rules of Civil Procedure states, "Every action shall be prosecuted in the name of the real party in interest." This is a mandatory statement. If the Plaintiff is not a real party in interest and the real party is not joined in a reasonable time, the suit must be dismissed. Rule 17(a) has been interpreted by the Supreme Court of Idaho in *Christensen Family Trust v.*

Christensen, 133 Idaho 866, 993 P.2d 1197 (1999). The co-plaintiffs included four third party beneficiaries, which the District Court found were not real parties in interest under Rule 17(a), dismissing them from the suit. The co-plaintiffs asserted that they are beneficiaries of the family trust and thus entitled to pursue the action. The Supreme Court found that the co-plaintiff's contingent interest in the trust corpus was not sufficient to make them real parties in interest in an action involving the Family Trust, affirming the district court's dismissal of the co-plaintiffs from the action.

In the instant case before this court the Plaintiff, Citibank (South Dakota), N.A. (hereinafter "Citibank") claims to be the beneficiary of the Citibank Credit Card Issuance Trust (hereinafter "the Issuance Trust") and thus has standing (as a real party in interest). But Citibank's position as a beneficiary terminated when the Issuance Trust paid Citibank for the receivables which Citibank sold to the Citibank Credit Card Master Trust I (hereinafter "the Master Trust"). The termination of Citibank's beneficiary status in regards to the account in question took place well before the account allegedly became delinquent or defaulted. Citibank was no longer a beneficiary in regards to this account at the time this lawsuit was filed, and as such could not qualify as a real party in interest under *Christensen* (supra). At the time Citibank filed this action, the only beneficiaries to the Issuance Trust in regards to this account were the investors.

Citibank initially claimed to be the owner of the alleged debt involved, but when presented with the evidence in the Citibank Credit Card Prospectus, and the Pooling and Servicing Agreement, Citibank essentially admitted that they

had sold the receivables involved. In *Caughey v. George Jensen & Sons*, 74 Idaho 132, 258 P.2d 357 (1953) the Supreme Court of Idaho held "[2] It is generally held that the owner of the legal title is sufficient to meet the requirements of the statute." (the statute being I.C. § 5-301, which became Rule 17(a)). In the instant case, the evidence on the record clearly identifies Deutsche Bank Trust Company Americas as owner of the legal title to the alleged debt (the Receivables), and the real party in interest, not Citibank. The Supreme Court of Idaho has long held that an assignment of all rights, title and interest (as is the case with the sale and assignment of the Receivables from Citibank to the Master Trust) makes the assignee the real party in interest. See *MacLeod v. Stelle*, 43 Idaho 64, 249 P. 254 (1926), "[4] As between an assignor and assignee on a completed assignment, the assignee is the real party in interest. (*Brumback & Calahan v. J. B. Oldham & Co.*, 1 Idaho 709.) See also *National Motor Sales Co., v.* Walters, 85 Idaho 349, 379 P.2d 643 (1963). Thus the Master Trust is the real party in interest, not Citibank.

Citibank also claims to "control" the Issuance Trust as "manager" and thus gains standing as a result of this "control". But Rule 17(a) requires more than some form of "control" or influence. Rule 17(a) provides, "An executor, administrator, personal representative, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in this capacity without joining the party for whose benefit the action is brought." Citibank does not fit into any of these categories. The trustee of an express trust

does, and Deutsche Bank Trust Company Americas is that trustee and holds legal ownership of the alleged debt (the receivables).

Citibank claims to have retained the "account" as part of the agreement between Citibank and Carroll, and as such is collecting on an account which it owns. But what Citibank owns is essentially an agreement to create new Receivables based on Carroll's alleged use of the credit card. All previous receivables (the actual alleged debt) having been sold to the Master Trust and paid for by the Issuance Trust. As far as an actual account is concerned, the account balance is zero. Citibank discounted and sold the alleged debt, is no longer a real party in interest, and owns nothing.

The Supreme Court of Idaho has adopted (in 1975) additional wording from the Federal Rules of Civil Procedure – Rule 17(a), allowing the real party in interest to be substituted or joined in an action which has not been filed in the name of the real party in interest. Over the years, the court has refined the reasons for amending the complaint to include the real party in interest. In *Hayward v. Valley Vista Care Corporation*, 136 Idaho 342, 33 P.3d 816 (2001), the court stated, "[8] This rule is intended to "prevent forfeiture when determination of the proper party is difficult or when an understandable mistake has been made in selecting the party plaintiff." *Conda Partnership, Inc., v. M.D. Constr. Co.*, 115 Idaho 902, 904, 771 P.2d 920, 922 (Ct.App. 1989). Recently, the rule has been explained as allowing the real party in interest to be joined or substituted where the real party has not been included by mistake or because it was too difficult to identify the real party in interest.

In the instant case, Citibank had no difficulty in identifying the real party in interest. Citibank certainly knew it sold the receivables, and they knew who the legal holder of title to the alleged debt was: Deutsche Bank Trust Company Americas. Not identifying the real party in interest was also not a mistake, but an act of deception and misrepresentation. Citibank either knew, or should have known that it was not a real party in interest before this action was filed against Carroll. It has been more than a year since Carroll raised the issue of standing. Ten months ago opposing counsel informed Carroll that the standing issue could be "fixed", and yet nothing has been done to "fix" the standing issue. Citibank is clearly not a real party in interest and is not entitled to maintain this action against Carroll.

This court may find the decision of other courts instructive. In the U.S. District Court, Northern District of Ohio, Eastern Division, Judge Christopher A. Boyco stated (Exhibit A), "Plaintiff-Lenders shall take note, furthermore, that prior to the issuance of its October 10, 2007 Order, the Court considered the principles of "real party in interest," and examined Fed. R. Civ. P. 17 – "Parties Plaintiff and Defendant; Capacity" and it's associated Commentary. The Rule is not *apropos* to the situation raised by these Foreclosure Complaints. The Rule's Commentary offers this explanation: "The provision should not be misunderstood or distorted. It is intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made. ... It is, in cases of this sort, intended to insure against forfeiture and injustice ..." Plaintiff-Lenders do not allege mistake or that a party cannot be identified. Nor

will Plaintiff-Lenders suffer forfeiture or injustice by the dismissal of these defective complaints otherwise than on the merits." (Page 3 and 4 of 6). Judge Boyco dismissed, without prejudice, 14 foreclosure cases after the Plaintiffs failed to provide evidence that they were the holder and owner of the Note and Mortgage ***as of the date the complaint was filed***. As a footnote, the mortgages involved had been securitized.

Recently, Judge Thomas M. Rose, U.S. District Court Southern District of Ohio, Western Division at Dayton (Exhibit B) followed suit in dismissing 27 foreclosure cases because the plaintiff was not the real party in interest, again the issue was over securitized mortgages and who actually owned the Notes and Mortgages.

In the Circuit Court for Pinellas County, Florida, Judge Walt Logan dismissed 20 cases IN RE: Mortgage Electronic Registration Systems, Inc. (MERS) on the 18th day of August, 2005 because the Plaintiff was not the real party in interest. (Copy available upon request).

Citibank did not have standing and was not a real party in interest when the complaint was filed. Citibank has not alleged that the real party could not be found or determined, nor has Citibank claimed that not including the real party in interest was a mistake. The complaint against Carroll was defective when filed and remains defective to this day. The complaint should be dismissed.

Dated this 17 day of January, 2008.

Miriam G. Carroll

Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF MAILING

I, David F. Capps, do hereby certify, under penalty of perjury, that I mailed a true and correct copy of the Defendant's BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION this 17 day of January, 2008 by Certified Mail # 7007 2680 0000 6452 0236 to the attorney for the Plaintiff at the following address:

Sheila R. Schwager
Hawley Troxell Ennis & Hawley L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

David F. Capps

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE FORECLOSURE CASES	)	**CASE NO. NO.1:07CV2282**
	)	**07CV2532**
	)	**07CV2560**
	)	**07CV2602**
	)	**07CV2631**
	)	**07CV2638**
	)	**07CV2681**
	)	**07CV2695**
	)	**07CV2920**
	)	**07CV2930**
	)	**07CV2949**
	)	**07CV2950**
	)	**07CV3000**
	)	**07CV3029**
	)	
	)	**JUDGE CHRISTOPHER A. BOYKO**
	)	
	)	
	)	
	)	**OPINION AND ORDER**
	)	
	)	

CHRISTOPHER A. BOYKO, J.:

On October 10, 2007, this Court issued an Order requiring Plaintiff-Lenders in a number of pending foreclosure cases to file a copy of the executed Assignment demonstrating Plaintiff was the holder and owner of the Note and Mortgage ***as of the date the Complaint was filed***, or the Court would enter a dismissal. After considering the submissions, along with all the documents filed of record, the Court dismisses the captioned cases without prejudice. The Court has reached today's determination after a thorough review of all the relevant law and the briefs and arguments recently presented by the parties, including oral

arguments heard on Plaintiff Deutsche Bank's Motion for Reconsideration. The decision, therefore, is applicable from this date forward, and shall not have retroactive effect.

LAW AND ANALYSIS

A party seeking to bring a case into federal court on grounds of diversity carries the burden of establishing diversity jurisdiction. *Coyne v. American Tobacco Company*, 183 F. 3d 488 (6th Cir. 1999). Further, the plaintiff "bears the burden of demonstrating standing and must plead its components with specificity." *Coyne*, 183 F. 3d at 494; *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982). The minimum constitutional requirements for standing are: proof of injury in fact, causation, and redressability. *Valley Forge*, 454 U.S. at 472. In addition, "the plaintiff must be a proper proponent, and the action a proper vehicle, to vindicate the rights asserted." *Coyne*, 183 F. 3d at 494 (quoting *Pestrak v. Ohio Elections Comm'n*, 926 F. 2d 573, 576 (6th Cir. 1991)). To satisfy the requirements of Article III of the United States Constitution, the plaintiff must show he has ***personally suffered some actual injury*** as a result of the illegal conduct of the defendant. (Emphasis added). *Coyne*, 183 F. 3d at 494; *Valley Forge*, 454 U.S. at 472.

In each of the above-captioned Complaints, the named Plaintiff alleges it is the holder and owner of the Note and Mortgage. However, the attached Note and Mortgage identify the mortgagee and promisee as the original lending institution — one other than the named Plaintiff. Further, the Preliminary Judicial Report attached as an exhibit to the Complaint makes no reference to the named Plaintiff in the recorded chain of title/interest. The Court's Amended General Order No. 2006-16 requires Plaintiff to submit an affidavit along with the Complaint, which identifies Plaintiff either as the original mortgage holder, or as an assignee,

trustee or successor-in-interest. Once again, the affidavits submitted in all these cases recite the averment that Plaintiff is the owner of the Note and Mortgage, without any mention of an assignment or trust or successor interest. Consequently, the very filings and submissions of the Plaintiff create a conflict. In every instance, then, Plaintiff has not satisfied its burden of demonstrating standing at the time of the filing of the Complaint.

Understandably, the Court requested clarification by requiring each Plaintiff to submit a copy of the Assignment of the Note and Mortgage, executed as of the date of the Foreclosure Complaint. In the above-captioned cases, ***none*** of the Assignments show the named Plaintiff to be the owner of the rights, title and interest under the Mortgage at issue as of the date of the Foreclosure Complaint. The Assignments, in every instance, express a present intent to convey all rights, title and interest in the Mortgage and the accompanying Note to the Plaintiff named in the caption of the Foreclosure Complaint upon receipt of sufficient consideration on the date the Assignment was signed and notarized. Further, the Assignment documents are all prepared by counsel for the named Plaintiffs. These proffered documents belie Plaintiffs' assertion they own the Note and Mortgage by means of a purchase which pre-dated the Complaint by days, months or years.

Plaintiff-Lenders shall take note, furthermore, that prior to the issuance of its October 10, 2007 Order, the Court considered the principles of "real party in interest," and examined Fed. R. Civ. P. 17 — "Parties Plaintiff and Defendant; Capacity" and its associated Commentary. The Rule is not *apropos* to the situation raised by these Foreclosure Complaints. The Rule's Commentary offers this explanation: "The provision should not be misunderstood or distorted. It is intended to prevent forfeiture when determination of the

proper party to sue is difficult or when an understandable mistake has been made. ... It is, in cases of this sort, intended to insure against forfeiture and injustice ..." Plaintiff-Lenders do not allege mistake or that a party cannot be identified. Nor will Plaintiff-Lenders suffer forfeiture or injustice by the dismissal of these defective complaints otherwise than on the merits.

Moreover, this Court is obligated to carefully scrutinize all filings and pleadings in foreclosure actions, since the unique nature of real property requires contracts and transactions concerning real property to be in writing. R.C. § 1335.04. Ohio law holds that when a mortgage is assigned, moreover, the assignment is subject to the recording requirements of R.C. § 5301.25. *Creager v. Anderson* (1934), 16 Ohio Law Abs. 400 (interpreting the former statute, G.C. § 8543). "Thus, with regards to real property, before an entity assigned an interest in that property would be entitled to receive a distribution from the sale of the property, their interest therein must have been recorded in accordance with Ohio law." *In re Ochmanek*, 266 B.R. 114, 120 (Bkrtcy.N.D. Ohio 2000) (citing *Pinney v. Merchants' National Bank of Defiance*, 71 Ohio St. 173, 177 (1904).[1]

This Court acknowledges the right of banks, holding valid mortgages, to receive timely payments. And, if they do not receive timely payments, banks have the right to properly file actions on the defaulted notes — seeking foreclosure on the property securing the notes. Yet, this Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction. Neither the fluidity of

[1] Astoundingly, counsel at oral argument stated that his client, the purchaser from the original mortgagee, acquired complete legal and equitable interest in land when money changed hands, even before the purchase agreement, let alone a proper assignment, made its way into his client's possession.

the secondary mortgage market, nor monetary or economic considerations of the parties, nor the convenience of the litigants supersede those obligations.

Despite Plaintiffs' counsel's belief that "there appears to be some level of disagreement and/or misunderstanding amongst professionals, borrowers, attorneys and members of the judiciary," the Court does not require instruction and is not operating under any misapprehension. The "real party in interest" rule, to which the Plaintiff-Lenders continually refer in their responses or motions, is clearly comprehended by the Court and is not intended to assist banks in avoiding traditional federal diversity requirements.[2] Unlike Ohio State law and procedure, as Plaintiffs perceive it, the federal judicial system need not, and will not, be "forgiving in this regard."[3]

2

Plaintiff's reliance on Ohio's "real party in interest rule" (ORCP 17) and on any Ohio case citations is misplaced. Although Ohio law guides federal courts on substantive issues, state procedural law cannot be used to explain, modify or contradict a federal rule of procedure, which purpose is clearly spelled out in the Commentary. "In federal diversity actions, state law governs substantive issues and federal law governs procedural issues." *Erie R.R. Co. v. Tompkins*, 304 U.S. 63 (1938); *Legg v. Chopra*, 286 F. 3d 286, 289 (6th Cir. 2002); *Gafford v. General Electric Company*, 997 F. 2d 150, 165-6 (6th Cir. 1993).

3

Plaintiff's, "Judge, you just don't understand how things work," argument reveals a condescending mindset and quasi-monopolistic system where financial institutions have traditionally controlled, and still control, the foreclosure process. Typically, the homeowner who finds himself/herself in financial straits, fails to make the required mortgage payments and faces a foreclosure suit, is not interested in testing state or federal jurisdictional requirements, either *pro se* or through counsel. Their focus is either, "how do I save my home," or "if I have to give it up, I'll simply leave and find somewhere else to live."

In the meantime, the financial institutions or successors/assignees rush to foreclose, obtain a default judgment and then sit on the deed, avoiding responsibility for maintaining the property while reaping the financial benefits of interest running on a judgment. The financial institutions know the law charges the one with title (still the homeowner) with maintaining the property.

There is no doubt every decision made by a financial institution in the foreclosure process is driven by money. And the legal work which flows from winning the financial institution's favor is highly lucrative. There is nothing improper or wrong with financial institutions or law firms making a profit — to the contrary , they should be rewarded for sound business and legal practices. However, unchallenged by underfinanced opponents, the institutions worry less about jurisdictional requirements and more about maximizing returns. Unlike the focus of financial institutions, the federal courts must act as gatekeepers, assuring that only those who meet diversity and standing requirements are allowed to pass through. Counsel for the institutions are not without legal argument to support their position, but their arguments fall woefully short of justifying their premature filings, and utterly fail to satisfy their standing

CONCLUSION

For all the foregoing reasons, the above-captioned Foreclosure Complaints are dismissed without prejudice.

IT IS SO ORDERED.

DATE: October 31, 2007

S/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge

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and jurisdictional burdens. The institutions seem to adopt the attitude that since they have been doing this for so long, unchallenged, this practice equates with legal compliance. Finally put to the test, their weak legal arguments compel the Court to stop them at the gate.

The Court will illustrate in simple terms its decision: "Fluidity of the market" — "X" dollars, "contractual arrangements between institutions and counsel" — "X" dollars, "purchasing mortgages in bulk and securitizing" — "X" dollars, "rush to file, slow to record after judgment" — "X" dollars, "the jurisdictional integrity of United States District Court" — "Priceless."

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE FORECLOSURE CASES

CASE NO. 3:07CV043
07CV049
07CV085
07CV138
07CV237
07CV240
07CV246
07CV248
07CV257
07CV286
07CV304
07CV312
07CV317
07CV343
07CV353
07CV360
07CV386
07CV389
07CV390
07CV433

JUDGE THOMAS M. ROSE

OPINION AND ORDER

The first private foreclosure action based upon federal diversity jurisdiction was filed in this Court on February 9, 2007. Since then, twenty-six (26) additional complaints for foreclosure based upon federal diversity jurisdiction have been filed.

STANDING AND SUBJECT MATTER JURISDICTION

While each of the complaints for foreclosure pleads standing and jurisdiction, evidence submitted either with the complaint or later in the case indicates that standing and/or subject matter jurisdiction may not have existed at the time certain of the foreclosure complaints were

filed. Further, only one of these foreclosure complaints thus far was filed in compliance with this Court's General Order 07-03 captioned "Procedures for Foreclosure Actions Based On Diversity Jurisdiction.

Standing

Federal courts have only the power authorized by Article III of the United States Constitution and the statutes enacted by Congress pursuant thereto. *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986). As a result, a plaintiff must have constitutional standing in order for a federal court to have jurisdiction. *Id.*

Plaintiffs have the burden of establishing standing. *Loren v. Blue Cross & Blue Shield of Michigan*, No. 06-2090, 2007 WL 2726704 at *7 (6th Cir. Sept. 20, 2007). If they cannot do so, their claims must be dismissed for lack of subject matter jurisdiction. *Id.* (citing *Central States Southeast & Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care*, 433 F.3d 181, 199 (2d Cir. 2005)).

Because standing involves the federal court's subject matter jurisdiction, it can be raised sua sponte. *Id.* (citing *Central States*, 433 F.3d at 198). Further, standing is determined as of the time the complaint is filed. *Cleveland Branch, NAACP v. City of Parma, Ohio*, 263 F.3d 513, 524 (6th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002). Finally, while a determination of standing is generally based upon allegations in the complaint, when standing is questioned, courts may consider evidence thereof. *See NAACP*, 263 F.3d at 523-30; *Senter v. General Motors*, 532 F.2d 511 (6th Cir. 1976), *cert. denied*, 429 U.S. 870 (1976).

To satisfy Article III's standing requirements, a plaintiff must show: (1) it has suffered an injury in fact that is concrete and particularized and actual or imminent, not conjectural or

hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Loren*, 2007 WL 2726704 at *7.

To show standing, then, in a foreclosure action, the plaintiff must show that it is the holder of the note and the mortgage at the time the complaint was filed. The foreclosure plaintiff must also show, at the time the foreclosure action is filed, that the holder of the note and mortgage is harmed, usually by not having received payments on the note.

Diversity Jurisdiction

In addition to standing, a court may address the issue of subject matter jurisdiction at any time, with or without the issue being raised by a party to the action. *Community Health Plan of Ohio v. Mosser*, 347 F.3d 619, 622 (6th Cir. 2003). Further, as with standing, the plaintiff must show that the federal court has subject matter jurisdiction over the foreclosure action at the time the foreclosure action was filed. *Coyne v. American Tobacco Company*, 183 F.3d 488, 492-93 (6th Cir. 1999). Also as with standing, a federal court is required to assure itself that it has subject matter jurisdiction and the burden is on the plaintiff to show that subject matter jurisdiction existed at the time the complaint was filed. *Id.* Finally, if subject matter jurisdiction is questioned by the court, the plaintiff cannot rely solely upon the allegations in the complaint and must bring forward relevant, adequate proof that establishes subject matter jurisdiction. *Nelson Construction Co. v. U.S.*, No. 05-1205C, 2007 WL 3299161 at *3 (Fed. Cl., Oct. 29, 2007) (citing *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178 (1936)); *see also Nichols v. Muskingum College*, 318 F.3d 674, (6th Cir. 2003) ("in reviewing a 12(b)(1) motion, the court may consider evidence outside the pleadings to resolve factual disputes

concerning jurisdiction...").

The foreclosure actions are brought to federal court based upon the federal court having jurisdiction pursuant to 28 U.S.C. § 1332, termed diversity jurisdiction. To invoke diversity jurisdiction, the plaintiff must show that there is complete diversity of citizenship of the parties and that the amount in controversy exceeds $75,000. 28 U.S.C. § 1332.

Conclusion

While the plaintiffs in each of the above-captioned cases have pled that they have standing and that this Court has subject matter jurisdiction, they have submitted evidence that indicates that they may not have had standing at the time the foreclosure complaint was filed and that subject matter jurisdiction may not have existed when the foreclosure complaint was filed. Further, this Court has the responsibility to assure itself that the foreclosure plaintiffs have standing and that subject-matter-jurisdiction requirements are met at the time the complaint is filed. Even without the concerns raised by the documents the plaintiffs have filed, there is reason to question the existence of standing and the jurisdictional amount. *See* Katherine M. Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims* 3-4 (November 6, 2007), University of Iowa College of Law Legal Studies Research Paper Series Available at SSRN: http://ssrn.com/abstract=1027961 ("[H]ome mortgage lenders often disobey the law and overreach in calculating the mortgage obligations of consumers. ... Many of the overcharges and unreliable calculations... raise the specter of poor recordkeeping, failure to comply with consumer protection laws, and massive, consistent overcharging.")

Therefore, plaintiffs are given until not later than thirty days following entry of this order to submit evidence showing that they had standing in the above-captioned cases **when the**

complaint was filed and that this Court had diversity jurisdiction **when the complaint was filed**. Failure to do so will result in dismissal without prejudice to refiling if and when the plaintiff acquires standing and the diversity jurisdiction requirements are met. *See In re Foreclosure Cases*, No. 1:07CV2282, et al., slip op. (N.D. Ohio Oct. 31, 2007) (Boyko, J.)

COMPLIANCE WITH GENERAL ORDER 07-03

Federal Rule of Civil Procedure 83(a)(2) provides that a "local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." Fed. R. Civ. P. 83(a)(2). The Court recognizes that a local rule concerning what documents are to be filed with a certain type of complaint is a rule of form. *Hicks v. Miller Brewing Company*, 2002 WL 663703 (5th Cir. 2002). However, a party may be denied rights as a sanction if failure to comply with such a local rule is willful. *Id.*

General Order 07-03 provides procedures for foreclosure actions that are based upon diversity jurisdiction. Included in this General Order is a list of items that must accompany the Complaint.[1] Among the items listed are: a Preliminary Judicial Report; a written payment history verified by the plaintiff's affidavit that the amount in controversy exceeds $75,000; a legible copy of the promissory note and any loan modifications, a recorded copy of the mortgage; any applicable assignments of the mortgage, an affidavit documenting that the named plaintiff is the owner and holder of the note and mortgage; and a corporate disclosure statement. In general, it is from these items and the foreclosure complaint that the Court can confirm standing and the

[1]The Court views the statement "the complaint must be accompanied by the following" to mean that the items listed must be filed with the complaint and not at some time later that is more convenient for the plaintiff.

existence of diversity jurisdiction at the time the foreclosure complaint is filed.

Conclusion

To date, twenty-six (26) of the twenty-seven (27) foreclosure actions based upon diversity jurisdiction pending before this Court were filed by the same attorney. One of the twenty-six (26) foreclosure actions was filed in compliance with General Order 07-03. The remainder were not.[2] Also, many of these foreclosure complaints are notated on the docket to indicate that they are not in compliance. Finally, the attorney who has filed the twenty-six (26) foreclosure complaints has informed the Court on the record that he knows and can comply with the filing requirements found in General Order 07-03.

Therefore, since the attorney who has filed twenty-six (26) of the twenty-seven (27) foreclosure actions based upon diversity jurisdiction that are currently before this Court is well aware of the requirements of General Order 07-03 and can comply with the General Order's filing requirements, failure in the future by this attorney to comply with the filing requirements of General Order 07-03 may only be considered to be willful. Also, due to the extensive discussions and argument that has taken place, failure to comply with the requirements of the General Order beyond the filing requirements by this attorney may also be considered to be willful.

A willful failure to comply with General Order 07-03 in the future by the attorney who filed the twenty-six foreclosure actions now pending may result in immediate dismissal of the

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[2]The Sixth Circuit may look to an attorney's actions in other cases to determine the extent of his or her good faith in a particular action. *See Capital Indemnity Corp. v. Jellinick*, 75 F. App'x 999, 1002 (6th Cir. 2003). Further, the law holds a plaintiff "accountable for the acts and omissions of [its] chosen counsel." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 397 (1993).

foreclosure action. Further, the attorney who filed the twenty-seventh foreclosure action is hereby put on notice that failure to comply with General Order 07-03 in the future may result in immediate dismissal of the foreclosure action.

This Court is well aware that entities who hold valid notes are entitled to receive timely payments in accordance with the notes. And, if they do not receive timely payments, the entities have the right to seek foreclosure on the accompanying mortgages. However, with regard the enforcement of standing and other jurisdictional requirements pertaining to foreclosure actions, this Court is in full agreement with Judge Christopher A Boyko of the United States District Court for the Northern District of Ohio who recently stressed that the judicial integrity of the United States District Court is "**Priceless**."

DONE and **ORDERED** in Dayton, Ohio, this Fifteenth day of November, 2007.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies provided:

Counsel of Record

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:03 O'CLOCK P .M.
JAN 24 2008
ROSE E. GEHRING
CLERK OF DISTRICT COURT
Kathy Johnson DEPUTY

CITIBANK (South Dakota), N.A.

Plaintiff,

v.

MIRIAM G. CARROLL,

Defendant.

Case No.: CV 06-37067

ORDER

For the reasons stated at the hearing held January 24, 2008, Miriam G. Carroll's Motion for Reconsideration and Objections are hereby DENIED.

It is so ORDERED, this the 24th day of January, 2008

JOHN BRADBURY
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. MIRIAM G. CARROLL, Defendant.	Case No. CV-2006-37067 ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER REGARDING DEFENDANT'S POST SUMMARY JUDGMENT ORDER DISCOVERY REQUESTS

This Court having entered its Memorandum Decision and Order on December 10, 2007, granting Plaintiff's Motion for Summary Judgment; Plaintiff having filed a Motion for Protective Order Regarding Defendant's Post Summary Judgment Order Discovery Requests ("Plaintiff's Motion"); Plaintiff's Motion having been fully briefed and having come on regularly for hearing on February 11, 2008 before the Honorable John Bradbury; this Court having considered all the pleadings, motions, memoranda, and other documents on file herein, being fully advised in the premises; good cause appearing therefore; and the Court having ruled orally from the bench to grant Plaintiff's Motion;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Plaintiff's Motion for Protective Order Regarding Defendant's Post Summary Judgment Order Discovery Requests is hereby GRANTED

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendant is enjoined from seeking, and Plaintiff need not respond to, the discovery that is attached as Exhibits B & C to the Affidavit of Sheila R. Schwager in Support of Plaintiff's Motion for Protective Order Regarding Defendant's Post Summary Judgment Order Discovery Requests, filed on January 25, 2008.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, that the Defendant is enjoined from seeking any additional or future discovery in this action without first obtaining leave of this Court.

Any attorney fees and costs to be awarded to Plaintiff for being compelled to bring the Protective Order Motion shall be awarded as part of the Court's entry of Final Judgment.

DATED THIS 13 day of February, 2008.

By John Bradbury
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2008, I caused to be served a true copy of the foregoing ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER REGARDING DEFENDANT'S POST SUMMARY JUDGMENT ORDER DISCOVERY REQUESTS by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

_X_ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

_X_ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ Overnight Mail
____ Telecopy
____ Email

Rose E. Gehring, Clerk
Kathy Johnson, Deputy
Clerk of the Court

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff, vs. *MIRIAM G. CARROLL,* Defendant.	Case No. CV-2006-37067 ORDER DENYING DEFENDANT'S *MOTION FOR RECONSIDERATION*, OBJECTIONS, AND MOTION TO CONTINUE HEARING ON FINAL JUDGMENT AND ENTRY OF FINAL *JUDGMENT*

This Court having entered its Memorandum Decision and Order on December 10, 2007, granting Plaintiff's Motion for Summary Judgment and requesting that Plaintiff submit a final judgment; Plaintiff having filed a Motion for Entry of Judgment and Request for Attorney Fees and Costs on December 21, 2007; Defendant having filed a Motion for Reconsideration on December 24, 2007; Defendant having filed a pleading entitled "Objections" on December 31, 2007; Defendant having filed a Motion to Continue Hearing on Final Judgment and Entry of Judgment on December 31, 2007; with all these motions having been fully briefed and having come on regularly for hearing on January 24, 2008 before the Honorable John Bradbury; this Court having considered all the pleadings, motions, memoranda, and other documents on file herein, being fully advised in the premises; and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Defendant's Motion for Reconsideration, Objections, and Motion to Continue Hearing on Final Judgment and Entry of Judgment, are hereby DENIED.

The Plaintiff's Motion for Entry of Judgment and Request for Attorney Fees and Costs is taken under advisement for the Court to consider the amount of attorney fees and costs to be awarded. Plaintiff is granted five (5) days to file a Supplement to its attorney fees and costs for the additional attorney fees and costs incurred subsequent to the Plaintiff filing the Motion for Entry of Judgment and Request for Attorney Fees and Costs.

DATED THIS 4 day of February, 2008.

By _____
Judge John Bradbury

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2008, I caused to be served a true copy of the foregoing ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION, OBJECTIONS, AND MOTION TO CONTINUE HEARING ON FINAL JUDGMENT AND ENTRY OF FINAL JUDGMENT by the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[*pro se*]

__X__ U.S. Mail, Postage Prepaid
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy
_____ Email

Sheila R. Schwager
Hawley Troxell Ennis & Hawley, LLP
P. O. Box 1617
Boise, ID 83701-1617

__X__ U.S. Mail, Postage Prepaid
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy
_____ Email

Rose E. Gehring, Clerk.
Kathy Johnson, Deputy
Clerk of the Court

Miriam G. Carroll
104 Jefferson Dr.
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff, Respondant,

vs.

MIRIAM G. CARROLL,

Defendant, Appellant,

Case No. **CV-2006-37067**

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CITIBANK (SOUTH DAKOTA), N.A., AND THE PARTY'S ATTORNEYS, HAWLEY, TROXELL, ENNIS, & HAWLEY, L.L.P., AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Miriam G. Carroll, appeals against the above named respondent to the Idaho Supreme Court from the final judgment, entered in the above entitled action on the 4th day of February, 2008, Honorable Judge John Bradbury presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.
3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

   (a) Whether the trial court judge erred in deciding that the Plaintiff had standing without the Plaintiff providing any proof of ownership.

   (b) Whether the trial court judge erred in not allowing discovery of the standing issue.

   (c) Whether the denial of discovery on the standing issue constitutes a denial of due process.

   (d) Whether the trial court judge erred in denying the Defendant's Motion for Reconsideration based on the Plaintiff not being a real party in interest.

   (e) Whether the trial court judge erred in allowing the action to continue when evidence was presented demonstrating that the Plaintiff did not have standing, and in not ordering the Plaintiff to provide proof they were a real party in interest.

   (f) Whether the trial court judge erred in deciding that the Plaintiff was exempt from the Idaho Collection Agency Act.

4. No order has been entered sealing all or any portion of the record.

5. (a) A reporter's transcript is hereby requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

(i) Mr. Capps' testimony in the hearing dated 11-1-07

(ii) Mr. Capps' testimony in the hearing dated 1-24-08

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

(a) Motion to Compel Discovery filed 1-9-07.

(b) Affidavit of Miriam G. Carroll in support of her Motion to Compel Discovery filed 1-18-07.

(c) Motion for Show Cause Hearing filed 6-21-07.

(d) Defendant's Memorandum on the Idaho Collection Agency Act filed 6-28-07.

(e) Motion to Compel Discovery filed 8-8-07.

(f) Rebuttal to Citibank's Supplemental Reply Brief in Support of Summary Judgment filed 10-4-07.

(g) Defendant's Brief on the deposition of Idaho Department of Finance Consumer Bureau Chief Michael Larsen filed 11-9-07.

(h) Opposition to Plaintiff's Motion for Summary Judgment filed 11-23-07.

(i) Motion to Dismiss Due to Lack of Standing filed 11-29-07.

(j) Motion for reconsideration filed 12-24-07.

(k) Objections filed 12-31-07.

(l) Brief in Support of Motion for reconsideration filed 1-17-08.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b) (1) [**X**] That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) [ ] That the appellant is exempt from paying the estimated transcript fee because _____

(c) (1) [**X**] That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) [ ] That the appellant is exempt from paying the estimated fee for the preparation of the record because _____

(d) (1) [**X**] That the appellate filing fee has been paid.

(2) [ ] That appellant is exempt from paying the appellate filing fee because _____

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 6 TH day of March, 2008.

State of Idaho

County of Idaho ss. }

I, Miriam G. Carroll, being sworn, deposes and says:

That I am the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of my knowledge and belief.

Miriam G. Carroll

Signature of Appellant

Subscribed and Sworn to before me this 6th, day of March, 2008.

Sally J. Roy

Title

Residence Stites

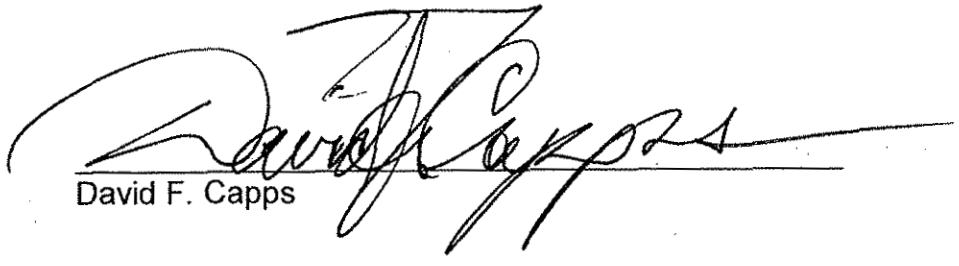
My Commission expires on 2/11/14

SALLY J. ROY NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF SERVICE

I, David F. Capps, hereby certify, under penalty of perjury, that I mailed a true and correct copy of this NOTICE OF APPEAL to the attorney for the Plaintiff by Certified Mail #7006 2150 0003 4550 2543 this 7TH day of March, 2008 at the following address:

Sheila R. Schwager
Hawley, Troxell, Ennis & Hawley L.L.P.
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617



David F. Capps

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
2/23/2006	TIOC	HOLMAN	Transfer In (from Lewis County)	John Bradbury
		HOLMAN	Filing: J2 - Order Granting Change Of Venue Pay To New County Paid by: McColl & Rasmussen *Receipt number: 0109616 Dated: 2/23/2006* Amount: $9.00 (Check)	John Bradbury
3/8/2006	MIL	KATHYJ	Affidavit Of Non-military Service And For Entry Of Judgment By Default	John Bradbury
	DIV	KATHYJ	Application,Affidavit,or Motion For Default	John Bradbury
	AFFD	KATHYJ	Affidavit for Attorney's Fees	John Bradbury
	MEMO	KATHYJ	Memorandum of Costs	John Bradbury
3/16/2006	DIV2	KATHYJ	Order For Default	John Bradbury
	DFJD	KATHYJ	Default Judgment Entered Without Hearing	John Bradbury
	CDIS	KATHYJ	CIVIL DISPOSITION	John Bradbury
3/30/2006	NOTC	KATHYJ	Notice of Motion to Set Aside default judgment and request for Hearing	John Bradbury
	MOTN	KATHYJ	Motion to Set Aside Default Judgment	John Bradbury
	AFFD	KATHYJ	Affidavit of Miriam G. Carroll	John Bradbury
	CERT	KATHYJ	Certificate Of Mailing	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 04/20/2006 03:30 PM)	John Bradbury
4/13/2006	AFFD	HOLMAN	Affidavit in opposition to Defendant's Motion to set aside Default Judgment	John Bradbury
4/20/2006	INHD	KATHYJ	*Hearing result for Motion held on 04/20/2006* 03:30 PM: Interim Hearing Held	John Bradbury
	ORDR	KATHYJ	Order	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
4/21/2006	HRSC	KATHYJ	Hearing Scheduled (Status Conference 05/04/2006 09:00 AM)	John Bradbury
4/26/2006	NOTC	KATHYJ	Notice of Intent to take Default	John Bradbury
	ANSW	KATHYJ	Answer to Complaint	John Bradbury
4/28/2006	OBJ	BEVILL	Objection to notice of intent to take default	John Bradbury
5/1/2006	CERT	HOLMAN	Certificate Of Service	John Bradbury
	NOTS	HOLMAN	Notice of Service	John Bradbury
5/4/2006	INHD	KATHYJ	Hearing result for Status Conference held on 05/04/2006 09:00 AM: Interim Hearing Held	John Bradbury
5/12/2006	CERT	HOLMAN	*Certificate Of Mailing*	John Bradbury
5/18/2006	NOTS	HOLMAN	Notice of Service	John Bradbury
	HRSC	HOLMAN	Hearing Scheduled (Motion 06/08/2006 04:30 PM) motion to amend complaint	John Bradbury
	NHRG	HOLMAN	Notice Of Hearing	John Bradbury
	MOTN	HOLMAN	Motion to Amend Complaint	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
5/30/2006	MISC	KATHYJ	Reply to Counterclaim	John Bradbury
6/5/2006	NOTS	KATHYJ	Notice of Service	John Bradbury
6/8/2006	HRHD	KATHYJ	Hearing result for Motion held on 06/08/2006 04:30 PM: Hearing Held motion to amend complaint	John Bradbury
6/15/2006	AFFD	ZIMMER	Affidavit in Support of Defendant's Motion to Compel Discovery	John Bradbury
	NOTC	ZIMMER	Notice of Motion to Compel Discovery	John Bradbury
	MOTN	HOLMAN	Motion to compel discovery	John Bradbury
	ORDR	HOLMAN	Order Amending complaint	John Bradbury
	HRSC	HOLMAN	Hearing Scheduled (Motion 06/22/2006 02:00 PM) Motion to compel Discovery	John Bradbury
	NHRG	HOLMAN	Notice Of Hearing	John Bradbury
6/22/2006	HRVC	KATHYJ	Hearing result for Motion held on 06/22/2006 02:00 PM: Hearing Vacated Motion to compel Discovery	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 06/23/2006 09:00 AM)	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
6/23/2006	INHD	KATHYJ	Hearing result for Motion held on 06/23/2006 09:00 AM: Interim Hearing Held	John Bradbury
6/27/2006	CERT	KATHYJ	Certificate Of Service	John Bradbury
6/29/2006	ORDR	KATHYJ	Order	John Bradbury
7/5/2006	MOTN	KATHYJ	Motion to Amend Answer to Complaint	John Bradbury
	NOTC	KATHYJ	Notice of Motion to Amend Answer to Complaint	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 08/10/2006 03:30 PM)	John Bradbury
7/10/2006	MISC	KATHYJ	Amended Complaint	John Bradbury
7/12/2006	NOTS	KATHYJ	Notice of Service	John Bradbury
7/17/2006	NOTS	HOLMAN	Notice of Service	John Bradbury
7/28/2006	MISC	KATHYJ	Certificate of Service	John Bradbury
8/10/2006	INHD	KATHYJ	Hearing result for Motion held on 08/10/2006 03:30 PM: Interim Hearing Held	John Bradbury
8/15/2006	ANSW	KATHYJ	Amended Answer to Complaint with Counterclaims	John Bradbury
	NOTC	KATHYJ	Notice of Motion for Evidentiary Hearing on Defendant's Dispute Letter	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 08/31/2006 04:00 PM)	John Bradbury
8/17/2006	NHRG	KATHYJ	Notice Of Hearing	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
8/21/2006	STIP	KATHYJ	Stipulation for Substitution of Counsel	John Bradbury
	MISC	KATHYJ	Demand for Jury Trial	John Bradbury
8/22/2006	MOTN	KATHYJ	Motion for Continued Hearing Date	John Bradbury
8/24/2006	CONT	KATHYJ	Hearing result for Motion held on 08/31/2006 04:00 PM: Continued	John Bradbury
	ORDR	KATHYJ	Order Grnating Motion for Continued Hearing Date	John Bradbury
8/25/2006	HRSC	KATHYJ	Hearing Scheduled (Motion 09/14/2006 04:00 PM)	John Bradbury
9/8/2006	MISC	KATHYJ	Objection to Motion for Evidentiary Hearing on Defendnat's Dispute Letter	John Bradbury
	ANSW	KATHYJ	Answer to Amended Counterclaims	John Bradbury
9/12/2006	MISC	KATHYJ	Rebuttal to Plaintiff's Objection to Motion for Evidentiary Hearing on Defendant's Dispute Letter	John Bradbury
9/14/2006	INHD	KATHYJ	Hearing result for Motion held on 09/14/2006 04:00 PM: Interim Hearing Held	John Bradbury
9/15/2006	HRSC	KATHYJ	Hearing Scheduled (Pretrial 04/05/2007 03:00 PM)	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Jury Trial 04/16/2007 08:30 AM)	John Bradbury
	ORDR	KATHYJ	Scheduling Order	John Bradbury
9/18/2006	NOTS	KATHYJ	Notice of Service	John Bradbury
10/19/2006	CERT	KATHYJ	Certificate Of Mailing	John Bradbury
11/3/2006	MISC	KATHYJ	Defendant's Third Set of Interrogatories, Requests for Admissin and Reuqests for Production of Documents	John Bradbury
12/7/2006	NOTC	KATHYJ	Notice of Compliance	John Bradbury
1/5/2007	NOTC	KATHYJ	Notice of Compliance	John Bradbury
1/8/2007	MOTN	KATHYJ	Plaintiff's Motion for Protective Order	John Bradbury
	MEMO	KATHYJ	Memorandum in Support of plaintiff's Motion for Protective order	John Bradbury
	AFFD	KATHYJ	Affidavit of Sheila R. Schwager in Support of Plaintiff's Motion for protective order	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 01/25/2007 02:30 PM)	John Bradbury
1/9/2007	MOTN	KATHYJ	Motion to Compel Discovery	John Bradbury
	NOTC	KATHYJ	Notice of Motion to Compel Discovery	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	MOTN	KATHYJ	Motion to Amend Answer to Complaint	John Bradbury
	NOTC	KATHYJ	Notice of Motion to Amend Answer to Complaint	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
1/18/2007	MISC	KATHYJ	Objection to Defendant's Motion to Amend Answer to Complaint	John Bradbury
	MISC	KATHYJ	Defendat's Brief in Opposition to Plaintiff's motion for protective Order	John Bradbury
	AFFD	KATHYJ	Affidavit of Miriam G. Carroll in Support of Her motion to Compel Discovery	John Bradbury
1/19/2007	MOTN	KATHYJ	Motion for Summary Judgment	John Bradbury
	MEMO	KATHYJ	Memorandum in Support of Plaintiff's Motion for Summary Judgment	John Bradbury
	AFFD	KATHYJ	Affidavit of Terri Ryning in Support of Motion for Summary Judgment	John Bradbury
	AFFD	KATHYJ	Affidavit of Sheila R. Schwager in Support of Plaintiff's Motion for Summary Judgment	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing of Plaintiff's Motion for Summary Judgment	John Bradbury
1/22/2007	HRSC	KATHYJ	Hearing Scheduled (Motion 02/22/2007 02:00 PM) re: Summary Judgment	John Bradbury
1/26/2007	INHD	KATHYJ	Hearing result for Motion held on 01/25/2007 02:30 PM: Interim Hearing Held	John Bradbury
1/31/2007	MISC	KATHYJ	Request for Judicial Notice	John Bradbury
	NOTS	KATHYJ	Notice of Service	John Bradbury
2/1/2007	ORDR	KATHYJ	Order Taking Judicial Notice	John Bradbury
2/6/2007	MISC	KATHYJ	Request for Continuance	John Bradbury
	MISC	KATHYJ	Objection to Defendant's Motion for Continuance	John Bradbury
	MOTN	KATHYJ	Motion to Set Aside Order Taking Judicial Notice	John Bradbury
	NOTC	KATHYJ	Notice of Motion to Set Aside Order Taking Judicial Notice	John Bradbury
2/7/2007	AFFD	KATHYJ	Affidavit of Sheila R. Schwager in Support of Plaintiff's Objection to Defendant's Motion for Continuance	John Bradbury
2/8/2007	MISC	KATHYJ	Amended Request for COntinuance	John Bradbury
2/21/2007	CONT	KATHYJ	Hearing result for Motion held on 02/22/2007 02:00 PM: Continued re: Summary Judgment	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 03/29/2007 02:00 PM) re: Summary Judgment	John Bradbury
	NHRG	KATHYJ	Amended Notice Of Hearing	John Bradbury
2/22/2007	MISC	KATHYJ	Objection to Defendat's Amended Motion for Continuance	John Bradbury
3/5/2007	HRSC	KATHYJ	Hearing Scheduled (Motion 03/22/2007 03:30 PM)	John Bradbury
	MOTN	KATHYJ	Motion to Continue Trial	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
3/8/2007	MOTN	KATHYJ	Motion to Amend Schedulling Order	John Bradbury
	NOTC	KATHYJ	Notice of Motion to Amend Scheduling Order	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
3/15/2007	MISC	KATHYJ	Request for Continuance	John Bradbury
3/19/2007	MISC	KATHYJ	Objection to Defendant's Motion for Continuance	John Bradbury
3/22/2007	NHRG	KATHYJ	Amended Notice Of Hearing (2)	John Bradbury
	HRVC	KATHYJ	Hearing result for Motion held on 03/22/2007 03:30 PM: Hearing Vacated	John Bradbury
3/29/2007	HRVC	KATHYJ	Hearing result for Jury Trial held on 04/16/2007 08:30 AM: Hearing Vacated	John Bradbury
	HRVC	KATHYJ	Hearing result for Pretrial held on 04/05/2007 03:00 PM: Hearing Vacated	John Bradbury
	INHD	KATHYJ	Hearing result for Motion held on 03/29/2007 02:00 PM: Interim Hearing Held re: Summary Judgment	John Bradbury
3/30/2007	NOTC	KATHYJ	Notice of Compliance	John Bradbury
4/5/2007	ORDR	KATHYJ	Order Vacating Trial Date Continuing Summary Judgment Hearing and granting Limited Discovery	John Bradbury
5/29/2007	MISC	KATHYJ	Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment	John Bradbury
6/14/2007	NOTC	KATHYJ	Notice of Compliance	John Bradbury
6/21/2007	MOTN	KATHYJ	Motion for Show Cause Hearing	John Bradbury
	NOTC	KATHYJ	Notice of Motion	John Bradbury
6/22/2007	HRSC	KATHYJ	Hearing Scheduled (Motion 07/12/2007 10:30 AM)	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
6/28/2007	MEMO	KATHYJ	Defendant's Memorandum on the Idaho Collection Agency Act	John Bradbury
7/5/2007	MOTN	KATHYJ	Plaintiff's Motion for Extension of Time for Submission of Reply Brief	John Bradbury
	MISC	KATHYJ	Plaintiff's Reply and Opposition to Defendant's Motion for Show Cause Hearing	John Bradbury
7/9/2007	ORDR	KATHYJ	Order Granting Plaintiff's Motion or Extension of Time for Submission of Reply Brief	John Bradbury
	MISC	KATHYJ	Plaintiff's reply and opposition to Defendat's Motion for Show Cuase hearing	John Bradbury
7/12/2007	INHD	KATHYJ	Hearing result for Motion held on 07/12/2007 10:30 AM: Interim Hearing Held	John Bradbury
7/13/2007	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 10/18/2007 02:00 PM)	John Bradbury
7/17/2007	AFFD	KATHYJ	Affidavit of Michael Larsen	John Bradbury
	MISC	KATHYJ	Citibank's Supplemental Reply Brief in Support of Summary Judgment	John Bradbury
8/8/2007	MOTN	KATHYJ	Motion to Compel Discovery	John Bradbury
	NOTC	KATHYJ	Notice of Motion	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
8/8/2007	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
8/16/2007	NOTC	KATHYJ	Notice of Deposition	John Bradbury
9/5/2007	NOTC	KATHYJ	Amended Notice of Deposition	John Bradbury
9/12/2007	AFSR	KATHYJ	Affidavit Of Service	John Bradbury
10/4/2007	MISC	KATHYJ	Rebuttal to Citibank's Supplemental Reply Brief in Support of Summary Judgment	John Bradbury
10/18/2007	CONT	KATHYJ	Hearing result for Motion held on 10/18/2007 02:00 PM: Continued	John Bradbury
10/22/2007	NOTC	KATHYJ	Notice of Filing of Deposition of Michael Larsen, Consumer Finance Bureau Chief for the Idaho Department of Finance	John Bradbury
10/23/2007	HRSC	KATHYJ	Hearing Scheduled (Motion 11/01/2007 02:30 PM)	John Bradbury
	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
11/2/2007	HRHD	KATHYJ	Hearing result for Motion held on 11/01/2007 02:30 PM: Hearing Held	John Bradbury
11/9/2007	MISC	KATHYJ	Defendant's Brief on the Deposition of Idaho Department of Finance Consumer Bureua Chief Michael Larsen	John Bradbury
11/14/2007	MISC	KATHYJ	Plaintiff's Motion to File Reply Brief on November 20, 2007	John Bradbury
11/15/2007	ORDR	ZIMMER	Order Granting Plaintiff's Motion to File Reply Brief on November 20, 2007	John Bradbury
11/20/2007	MISC	KATHYJ	Citibank's Response Brief Re: Testimony of Michael larsen	John Bradbury
11/23/2007	MISC	ZIMMER	Opposition to Plaintiff's Motion for Summary Judgment	John Bradbury
11/29/2007	MOTN	ZIMMER	Motion to Dismiss Due to Lack of Standing	John Bradbury
	NOTC	ZIMMER	Notice of Miton	John Bradbury
12/10/2007	DEOP	KATHYJ	Memorandum Decision and Order	John Bradbury
12/11/2007	CERT	KATHYJ	Certificate Of Mailing	John Bradbury
12/21/2007	MOTN	KATHYJ	Motion for Entry of Judgment and Request for Attorney Fees and Costs	John Bradbury
	AFFD	KATHYJ	Affidavit of Terri Ryning in Supportof Motion for Entry of Judgment	John Bradbury
	AFFD	KATHYJ	Affidavit of Sheila R. Schwager in Support of Plaintiff's Motion for Entry of Judgment and Request for Attorney Fees and Csots	John Bradbury
12/24/2007	NHRG	KATHYJ	Notice Of Hearing on Motion for Entry of Judgment and Request for Attorney Fees and Costs	John Bradbury
	MOTN	KATHYJ	Motion for Reconsideration	John Bradbury
	NOTC	KATHYJ	Notice of Motion	John Bradbury
	HRSC	KATHYJ	Hearing Scheduled (Motion 01/24/2008 02:00 PM)	John Bradbury

Citibank South Dakota NA vs. Miriam G Carroll

Date	Code	User		Judge
12/24/2007	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
12/31/2007	MISC	KATHYJ	Objections	John Bradbury
	NOTC	KATHYJ	Notice of Motion	John Bradbury
	MOTN	KATHYJ	Motion to Continue Hearing on Final Judgment and Entry of Judgment	John Bradbury
1/2/2008	NHRG	KATHYJ	Notice Of Hearing	John Bradbury
1/17/2008	MISC	KATHYJ	Brief in Support of Motion for Reconsideration	John Bradbury
	MISC	KATHYJ	Rebuttal of Citibank's Motion for Entry of Judgment and Request for Attorney Fees and Costs	John Bradbury
	MISC	KATHYJ	Response to Defendant's Objections	John Bradbury
	MISC	KATHYJ	Plaintiff's Reply and Opposition to Defendant's Motion for Reconsideration	John Bradbury
	MISC	KATHYJ	Objection to Defendat's Motion to Continue Hearing on Final Judgment and Entry of Judgment	John Bradbury
1/22/2008	MISC	HALL	Supplemental Affidavit of Sheila R Schwager in *Response to Objection for Motion for Entry of* Judgment and Request for Attorney Fees and Costs	John Bradbury
	MISC	HALL	Plaintiff's Reply in Support of Motion for Entry of Judgment and Request for Attorney Fees and Costs	John Bradbury
1/24/2008	ORDR	KATHYJ	Order	John Bradbury
	INHD	KATHYJ	Hearing result for Motion held on 01/24/2008 02:00 PM: Interim Hearing Held	John Bradbury
1/25/2008	CERT	KATHYJ	Certificate Of Mailing	John Bradbury
1/30/2008	AFFD	KATHYJ	Supplemental Affidavit of Sheila R. Schwager in Support of Plaintiff's Motion for Entry of Judgment and Request for Attorney Fees and Csots	John Bradbury
2/4/2008	ORDR	ZIMMER	Order Denying Defendant's Motion for Reconsideration, Objections, and Motion to Continue Hearing on Final Judgment and Entry of Final Judgment	John Bradbury
2/11/2008	INHD	KATHYJ	Interim Hearing Held	John Bradbury
2/13/2008	ORDR	KATHYJ	Order Granting Plaintiff's Motion for Protective Order Regarding Defendant's Post Summary Judgment Order Discovery Requests	John Bradbury
3/7/2008		COUNTER	Filing: T - Civil Appeals To The Supreme Court ($86.00 Directly to Supreme Court Plus this amount to the District Court) *Paid by: Carroll,* Miriam G (defendant) Receipt number: 0121386 Dated: 3/7/2008 Amount: $15.00 (Check) For: Carroll, Miriam G (defendant)	John Bradbury
	BNDC	COUNTER	Bond Posted - Cash (Receipt 121387 Dated 3/7/2008 for 300.00)	John Bradbury

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

Citibank (South Dakota) N.A., Plaintiff/Respondent,	Supreme Court No. 35053
vs.	Idaho County No. CV 06-37067
Miriam G. Carroll, Defendant/Appellant.	CLERK'S CERTIFICATE RE: EXHIBITS

STATE OF IDAHO)

County of Idaho)

I, Rose E. Gehring, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Idaho, hereby certify that the following are all the exhibits admitted or rejected to-wit:

No Exhibits offered in this case.

Dated this 12th day of March 2008.

SECOND JUDICIAL DISTRICT COURT IDAHO COUNTY STATE OF IDAHO SEAL

ROSE E. GEHRING, Clerk

By: Kathy Johnson
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

Citibank (South Dakota) N.A., Plaintiff/Respondent,	IDAHO COUNTY NO. CV 06-37067
vs.	CLERK'S CERTIFICATE
Miriam G. Carroll, Defendant/Appellant.	

STATE OF IDAHO)
)
County of Idaho)

I, Rose E. Gehring, Clerk of the District Court of the Second Judicial District, of the State of Idaho, in and for the County of Idaho, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify, that all exhibits, offered or admitted in the above entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Grangeville, Idaho, this 12th day of March 2008.

ROSE E. GEHRING, CLERK

BY: Kathy Johnson
Kathy Johnson
Deputy Clerk